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S. HRG. 103–963

# MATTERS WITHIN JURISDICTION OF THE SENATE COMMERCE COMMITTEE IN S. 1627, THE NORTH AMERICAN FREE TRADE AGREEMENT IMPLEMENTING LEGISLATION

Y 4. C 73/7: S. HRG. 103-963

Matters Within Jurisdiction of the...

## HEARING

BEFORE THE

## COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION UNITED STATES SENATE

ONE HUNDRED THIRD CONGRESS

FIRST SESSION

NOVEMBER 17, 1993

Printed for the use of the Committee on Commerce, Science, and Transportation

APR 5 1995

U.S. GOVERNMENT PRINTING OFFICE

74–252 CC WASHINGTON : 1995

For sale by the U.S. Government Printing Office
Superintendent of Documents, Congressional Sales Office, Washington, DC 20402
ISBN 0-16-046753-5

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WEDNESDAY, NOVEMBER 17, 1993

U.S. SENATE,
COMMITTEE ON COMMERCE, SCIENCE, AND TRANSPORTATION,
*Washington, DC.*

The committee met, pursuant to notice, at 3 p.m. in room SR–253 of the Russell Senate Office Building, Hon. Ernest F. Hollings (chairman of the committee) presiding.

Staff members assigned to this hearing: Ivan A. Schlager and Moses Boyd, senior counsels, Donald M. Itzkoff, staff counsel, and Patrick H. Windham, professional staff member; and Kevin M. Dempsey, minority staff counsel.

## OPENING STATEMENT OF SENATOR HOLLINGS

The CHAIRMAN. The committee will come to order.

Ambassador Yerxa, we appreciate your appearance here on short notice. I was thinking the day before yesterday that we would not even need this hearing. But I am afraid by now, we will; and we are trying to comply, so that each of the committees can properly present that phase of NAFTA through the Finance Committee to the floor, when NAFTA is submitted here momentarily.

And we have two issues at hand. One, with respect to truck safety; truck regulations. The other, with respect to the fuel economy standards.

That is in the primary jurisdiction of this particular committee. We welcome you to the committee, sir, and would be glad to hear from you at this time.

## STATEMENT OF HON. RUFUS YERXA, DEPUTY UNITED STATES TRADE REPRESENTATIVE

Ambassador YERXA. Thank you, Mr. Chairman; and I would like to begin by saying, on behalf of Ambassador Kantor and the administration, we appreciate the committee's many kindnesses to us in the discussion and preparation of this legislation.

The President and Ambassador Kantor certainly recognize that there are very different points of view in the Senate about NAFTA, but we certainly want to express our appreciation to you, Mr. Chairman, for the fairness with which the committee has dealt with USTR on the entire issue. We recognize that there is going

to be a full, complete debate on this issue in the Congress, and we are prepared for that verdict.

I do want to say, Mr. Chairman, that I know you have had Ambassador Kantor before you quite recently—I think as recently as October 21—where you have had a full discussion of NAFTA, back and forth, between the administration and members of your committee.

I do not want to try your patience or the time of the committee by repeating any of his arguments. I think I would like to make myself available to you and the members, in any way you want to address the issues today. We certainly are prepared to answer any questions or concerns you have about the legislation, before the committee makes any decision.

And so, I will dispense with any prepared statement, and certainly be ready to submit to you any information the committee requires.

The CHAIRMAN. Well, very good. Let me, with respect to a full and complete debate, amend that motion. I wish we could have full and complete debate; and be able to amend, like the White House is doing about every 10 minutes. But under fast track, we are not allowed to amend.

Ambassador Yerxa, where you say there is a difference of opinion about the United Nations Association of the United States, John C. Whitehead, chairman; Max Kampelman, chairman; Elliott Richardson, Cy Vance, and Ed Luck are cochairs, and Ed Luck, the president. So, I think these are folks of outstanding integrity and ability, and they are very, very much for NAFTA.

And I am reading from page 11, and this is the kind of thing that we need to have in the record, responded to. It said that:

Chrysler and GM have each invested, roughly, $100 million per year in Mexico since 1985. Ford has invested a total of $1.5 billion since 1984. Mexican auto exports to the United States increased 142 percent between 1985 and 1989. General Motors, in particular, has used maquiladora to do low-wage assembly of components for vehicles produced in the United States.

The Big 3's Mexican employment has grown dramatically in this period, while the size of their U.S. workforce has dropped sharply. Employment in maquiladora auto parts production climbed from 10,000 in 1980 to 130,000 in 1991.

According to the Office of Technology Assessment study, "U.S.-Mexico Trade: Pulling Together or Pulling Apart?" Mexican auto industry wages, including some fringe benefits, averaged $4 per hour; compared to $30 in the United States.

The Institute for International Economics estimates that U.S. automakers can increase their profit margins by 4 to 10 percent, by shifting production to Mexico, even with somewhat lower Mexican productivity.

The NAFTA agreement provides continued protection for the Mexican-based, but mostly U.S.-owned, auto industry for the next 10 years, while requiring the United States immediately reduce tariffs on passenger autos and light trucks from Mexico.

Most importantly, the United States has agreed to permit Mexican-produced cars and parts to be classified as domestic, for the purposes of the Corporate Average Fuel Economy rules. Previously, small fuel-efficient cars produced in Mexico could not be included in the manufacturer's calculations of the fleet average that the U.S. law requires it to achieve.

This exclusion constituted considerable protection for small car production in the United States, and its elimination is likely to result in a substantial shift for small car production to Mexico, where local demand will also be heavily weighted toward smaller, less expensive cars.

As Mexican wages will rise more slowly than will Mexican productivity, the profitability gap between Mexico and U.S. auto production will widen. The competitiveness of the North American production of small cars vis-a-vis Japanese and Korean imports may be enhanced, but possibly, at the expense of jobs and wages in the United States auto industry.

Of course, the committee is beyond the pale now of whether more jobs or less jobs, but we are very much interested in your comments relative to this statement, to the effect that they are going to harmonize downward, with respect to the Corporate Average Fuel Economy standards required now by U.S. law.

Ambassador YERXA. Mr. Chairman, before commenting on the changes in the CAFE standards under NAFTA, let me say something about the overall impact of this agreement on an automobile trade; because I think it has to be viewed in its entirety.

I am not going to quarrel with the statistics and fact you just read, about what has happened in automobile and auto parts trade between the United States and Mexico, under the existing regime. There is no question about it: It has been slanted heavily in favor of companies shifting production to Mexico, and shipping automobiles to the United States.

We believe strongly, and this is supported by not only the Big 3 producers, but a number of the major parts producers, truck producers, and producers of other transportation equipment, such as buses, that the reason for that imbalance is very simple: While the U.S. market is essentially open to trade, the Mexican market is, has been, and continues to be, in the auto sector, highly protected; and NAFTA is the solution to that problem, rather than a continuation of that problem or an exacerbation of the problem.

Under NAFTA, Mexico's tariffs on automobiles come down immediately; and more importantly, the many provisions of Mexican law which have distorted investment patterns—the domestic content requirement; the requirement that they export two for every automobile that is sold domestically—change rapidly under this agreement, shifting the incentives for production and sales to the most efficient, most productive companies, and the most efficient, most productive locations for manufacturing and assembly.

There is significant evidence to demonstrate that, that is going to be exceedingly beneficial to U.S.-based production, and U.S. exports; and that is, perhaps, best indicated by the fact that Mexico was reluctant to give up these protections. Because, even with the maquiladora program, their auto production relative to the United States is not as efficient; nor is it as efficient in auto parts.

The other criticism, of course, that has been heard very often is that Mexico is not a major market for the United States. But the fact is that, by 1995, Mexico will be a market for about 1 million new cars annually. It will be an ever-increasing market for auto parts, for buses, for trucks, all of which major U.S. production and economies of scale give us a substantial advantage in trade.

So, I do not disagree with many of the facts you have put forward. They demonstrate that the status quo is unacceptable. And the question becomes, can we, can the United States compete in an open market? We believe strongly that we can; we believe the facts are that U.S. producers are so much more productive that, notwithstanding differences in labor costs, the United States will be a substantial exporter to Mexico in the future.

Now, with respect to CAFE standards, I think I recognize that the committee wants to be absolutely sure what the implications of this agreement and this legislation are; and if you would like, I would be glad to review those for you.

Because under the NAFTA, the United States will change its provisions, with respect to CAFE. But let me stress, first of all, that NAFTA does not affect the U.S. legally mandated CAFE fuel efficiency standards, or the unilateral right of the United States to change those standards.

The United States will treat Mexican production the same as Canadian production always has been; which will, in the long run, assist North American manufacturers to make efficient production decisions.

Content added in Mexico and Canada will be considered domestic content, for purposes of the definition of a domestically manufactured auto, under CAFE requirements. Canadian content, as you know, is already accorded that treatment, since enactment of the CAFE standards in 1975.

And manufacturers that began the production of autos in Mexico prior to 1992 may make a one-time election, anytime after 1996, when to begin counting Mexican content as domestic content, for purposes of CAFE. They must apply the new definition after 2004.

Production in Mexico of companies that began assembly in Mexico after model year 1991, will be counted in the United States as domestic content, only for purposes of the CAFE requirements, upon implementation of NAFTA.

Now, Mr. Chairman, we believe that you have to view this in the totality of what it is going to do for overall North American production. Right now, under the maquiladora programs and the way Mexico operates its own trade regime, there is tremendous incentive to bring Japanese parts and Japanese production into Mexico, assemble it into vehicles, and sell it to the United States with a minimum of restrictions.

Under the NAFTA, that changes. The tariff benefits that are granted to Japanese parts would not allow it to qualify for the North American content rules. That enhances our ability to compete with the Japanese in the North American market.

Of course, there is going to continue to be auto production in Mexico. What we are talking about here is a bigger market in which to sell products, and a bigger market in which to buy products. And overall, that is going to benefit the biggest, most efficient, most productive economy in the arrangement, which is the United States.

The CHAIRMAN. Well, having said all of that, not necessarily a yes or no answer, but as I understand it, that still would harmonize downward. In other words, Chrysler has already announced it is going to make its small cars, the Neon, down there; and the others are doing the same. The market, whatever it is, will have more of a demand for a small car in the Mexico country, period.

That being the case, where we have a 27.5-mile-per-gallon CAFE standard, if you take those that were not considered domestic, and those now as small cars would be considered domestic under NAFTA, that would harmonize it downward to somewhere—we have had staff look at it, and advise us—somewhere around 21 to 21.5 miles per gallon. Do you agree with that, or not?

Ambassador YERXA. No, we would not agree with that. We are going to maintain the same fuel average, fuel fleet average. And it will not lead to a lowering of the overall fuel economy standards.

The CHAIRMAN. Well, we have got a better attendance than I ever expected here. I am going to be yielding to my colleagues here. One question then, Ambassador, with respect to the trucks: A similar question, whether we are harmonizing upward, downward, or going to maintain the same safety requirements relative to—Senator Danforth has led the way, with respect to the vehicle itself, the front end brakes—with respect to the driver, his license. Here, we have got 21 on these trucks; down there, it is 18 years of age.

Down there, with respect to the driver being examined, no such thing as the alcohol or drug testing there is required here; and, of course, the weight differential on the highways itself.

Tell us, tell the committee what NAFTA does to that particular differential.

Ambassador YERXA. I would be glad to describe it in all of its aspects, Mr. Chairman. First of all, let me say that no provision of the NAFTA requires us to compromise truck safety standards, or to change our vehicle size and weight limits. The NAFTA implementing legislation makes no such changes.

The CHAIRMAN. Well, I know the law does not require it, but you blend it in, as I know it. We will not be changing the U.S. law, that is just the point; but we would not be changing the Mexican law either, I take it.

Ambassador YERXA. Well, actually what happens under NAFTA is that there will not be changes in their safety and licensing requirements in Mexico, per se. There will be provisions to assure that trucks entering the United States meet our requirements. And more importantly, there will be the opportunity for U.S. trucks and U.S. trucking companies, for the first time, to operate in Mexico.

And given the size and economies of scale of our trucking firms, I think that is a very positive feature of the agreement. It, in part, explains why the American Trucking Association believes that there are substantial benefits in NAFTA for the U.S. industry.

The CHAIRMAN. Senator Danforth.

Senator DANFORTH. Ambassador Yerxa, there is no doubt, is there, that NAFTA would not reduce U.S. safety and environmental standards?

Ambassador YERXA. It will not. And Senator Danforth, any changes—whether they are to our safety laws or our environmental health and safety standards on trucks, on food, on consumer products—the only way changes can be made to these laws is through legislation enacted by the Congress in the future.

Even assuming that there were some future discussions between the three governments to try to achieve a greater harmonization of standards in the future, because that is in the long-term interests of international commerce, Congress retains the full power and prerogative, to decide what kinds of changes to adopt in the future.

This administration is not proposing to Congress that we lower or change any of those standards. And under the NAFTA and its dispute settlement procedures, there would not be any ruling that could change these standards as applied either by the Federal Government or by a State.

Senator DANFORTH. Now, there is some argument that in the side agreements, the United States has yielded its sovereignty with

respect to environmental matters, with respect to labor standards. How would you respond to that assertion?

Ambassador YERXA. I would respond in the following fashion: We, in setting out to negotiate these side agreements on labor and environment, were mindful of the very, very strong view that the United States needed to have mechanisms in place to bring about greater enforcement of laws in Mexico; and a greater assurance that, in an arrangement such as NAFTA, commercial benefit would not go to a country that had decided as a matter of policy to fail to enforce, or to enforce in some differential manner, its standards on environment and labor.

There was a basic judgment that the black-letter law on the books is sound, is well above those of other countries we do trade with; and in many respects, is comparable to the United States. But like many developing countries, there has been a lack of consistent enforcement.

And we wanted an agreement that helped give us mechanisms to strengthen that enforcement; but which did not compromise U.S. sovereignty. We do not want Canadian and Mexican officials deciding whether or not we should change our enforcement.

The balance that was struck, I think, is one which the United States can easily live with. It is an agreement that obligates us to effectively enforce environmental health and safety laws, as well as labor laws; and sets up a dispute settlement process, in order to do that.

Ultimately, there is no supernational body that can order the United States to change the way it enforces its laws. There could be, under the NAFTA, a trade dispute between countries, as a result of differences over the enforcement policies. But we believe that, that strongly favors the United States. The link to a trade mechanism really does give us——

Senator DANFORTH. Well, let us say that a dispute is initiated, with respect to some practice in the United States. First of all, that is a pattern, is it not? I mean, it would not be a claim that is lodged against a particular industry in the United States; it would be lodged against the U.S. Government, as I understand it.

Ambassador YERXA. It is an intergovernmental dispute; yes.

Senator DANFORTH. It would pertain to a pattern of nonenforcement in the United States.

Ambassador YERXA. That is correct.

Senator DANFORTH. And the trilateral body would have the authority to make a report; but it does not have any enforcement authority; is that not correct?

Ambassador YERXA. It does not have any enforcement authority. And furthermore, it does not have investigative powers which reach into domestic U.S. law. It cannot compel companies to produce evidence; it cannot inspect plants. It is strictly an intergovernmental arrangement, in which ultimately the question is between two governments, as to whether there is a persistent pattern of nonenforcement.

Senator DANFORTH. And it is my understanding that, even if such a claim is lodged against the U.S. Government for a pattern of nonenforcement, it would take two-thirds, two countries, to agree

to the remedy. And the maximum amount of remedy would be, in the first year, a $20 million fine against the country.

Ambassador YERXA. Against the government; yes.

Senator DANFORTH. And the government could simply refuse to pay that fine, if it wanted to; and then it would be enforced by a snapback to the maximum amount of $20 million for the first year——

Ambassador YERXA. In tariffs, that is correct.

Senator DANFORTH [continuing] Against U.S. products.

Ambassador YERXA. That is correct.

Senator DANFORTH. So, in other words, it would never be more of a tariff against U.S. products than we have today; and it would be a maximum the first year of $20 million. There is some indexing formula, I believe, in outyears. But it is indexed to that initial $20 million.

Ambassador YERXA. That is exactly the mechanism, Senator. And of course, we ultimately have the ability as a sovereign country, to refuse to accept any panel decision in this type of a dispute, and to let the other country take whatever measures it wants to take. It ultimately lies in the sovereign power of the two countries to decide how to resolve their dispute.

Senator DANFORTH. Let me just ask one other question, if you know the answer to it. Our U.S. tariff now, against imported Mexican, imported automobiles from Mexico, is what?

Ambassador YERXA. It is 2, I think it is 2.5 percent now.

Senator DANFORTH. A 2.5-percent tariff. Now, you might not know this, but the question that I have is: In the minds of those who know the auto industry—economists, and so on—do you know whether they view this 2.5-percent tariff that is now in existence as exactly a godsend to the U.S. auto industry?

I mean, it seems to me that, even if you believed that tariffs were the essence of protecting the U.S. auto industry, that we absolutely must have tariffs, and if we give up our tariffs, somehow our auto industry is going to collapse, giving up a 2.5-percent tariff is not exactly going to be the end of the world.

Ambassador YERXA. I think it is important to point out, that 2.5 percent is not 2.5 percent of the retail price of the car that the consumer pays; it is 2.5 percent of the so-called importer's sales price, which is like an exfactory price.

But more importantly, it does not provide much protection from imports from high-wage, high-cost countries, let alone from low-wage, low-cost countries. The Mexican tariff and the Mexican restrictions, on the other hand, are clearly an impediment to exporting. It is a 20-percent tariff, coupled with a domestic content requirements, coupled with an export balancing requirement.

Senator DANFORTH. Coupled with the maquiladora program?

Ambassador YERXA. Coupled with the maquiladora program, which gives a great incentive right now to bring in Japanese parts into Mexico, assemble them into cars, and ship them to the United States. Now, that is phased out, under the NAFTA.

Senator DANFORTH. So that right now, what is the figure of U.S. exports of automobiles to Mexico; and U.S. imports of automobiles from Mexico?

Ambassador YERXA. I think, there is some disagreement about the exact figure, because it depends on whether you include other forms of transportation, equipment such as trucks and buses, et cetera.

I think, new cars, we exported somewhere around 1,000 vehicles last year. It actually is one of our faster growing markets, even with the restrictions that exist today. But clearly, with the significant elimination of these other restrictions, with a Mexican economy that is growing, and one of the fastest-growing in the world, and with automobile purchases being one of the fastest-growing markets in the world, it provides substantial benefits.

That is why the Big 3 producers are estimating that it is possible that, in the first year alone, they could ship as much as 60,000 vehicles.

Senator DANFORTH. Do you know how many cars we are importing from Mexico?

Ambassador YERXA. No. I think it is somewhere around 200,000 today, I believe. I would have to check on that for you, though, Senator. It is clearly an imbalance in their favor today; and you know, that I think is the major contention of the auto producers, is that what many people are complaining about is the status quo.

The question becomes: How do we change it? Can we compete with low-wage countries? That is the question everyone is asking. Now, the fact of the matter is, we had a trade surplus with developing countries last year, of about $165 billion—I am sorry, total exports of $165 billion. We had a trade surplus in manufactured products of about $8 billion.

Our biggest trade deficits are with high-wage developed countries. We fully concede there is a significant problem in our trade relations, where we are not getting fair treatment, and where we need open markets. But if you look at our trade deficit with just two countries, Japan and Germany, two of the highest-wage countries in the world, it is a $58 billion deficit.

We are, I think—and I understand how the NAFTA can become sort of a scapegoat for what are legitimate concerns that Congress and the American people have, about trade barriers and trade imbalances—but if we had this kind of an agreement with many of those countries that we have the real problems with, we would be a lot better off. If we had real access to their markets, we would be in much better shape.

And we can compete with countries like Mexico; there is no question about it.

Senator DANFORTH. Mr. Chairman, I apologize for taking so much time.

The CHAIRMAN. That is all right. With respect to Nissan, for example, they are making light trucks. The duty or tariff on that is 25 percent; right?

Ambassador YERXA. On light trucks, it is, Mr. Chairman. That is a fairly small percentage of total U.S. production, however.

The CHAIRMAN. And, Business Week, in this particular automobile article of the year before last—and so, it has gone up since then—but they say, "The Big 3 executives expect the Mexican industry to double by the year 2000, to 2 million vehicles. And with an agreement, and with NAFTA, says Ford Motor, the Mexico

President Victor Barellio, We could be making 3 million units a year here, or more. Last year, Mexico topped"—that was back in 1991—"last year, Mexico topped 1 million vehicles, and exports surged 36 percent, to 358,000 vehicles.

"By the end of the decade, one in six cars and light trucks made in North America could come from the new Detroit south. From a sprawling network of factories, many of them new, the Big 3 will specialize in small cars suited for Mexico's market; but nearly one-half of them will be exported back to the United States, up from one-third today."

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much. Ambassador Yerxa, we are delighted to have you here today. Thank you for coming.

Let me go right into the safety issue that has been a concern of the Service Transportation Subcommittee that I chair. I would like to reference, at this point, Mr. Chairman, without having it printed in the record, the transcript of the hearing that I chaired on behalf and requested of the chairman on May 4, 1993, with regard to safety. I just want to reference that, without having it reprinted in the record.

The CHAIRMAN. Very good.

Senator EXON. Mr. Yerxa, let me go into the whole safety matter, and see if we can understand what progress we have made since this hearing, which I think led to some changes.

First, I want to try and make it absolutely clear, for the record, that every truck, every car, and every driver that enters the United States from Mexico—assuming that the NAFTA is approved—must comply with the same driving, safety and traffic laws which American drivers must obey. Is that correct?

Ambassador YERXA. That is correct, Senator.

Senator EXON. Now, let us go into some of the specifics, then. What about commercial driver's licenses? How does the commercial driver's license ruling and, as I understand it, understanding that the Bush administration's Department of Transportation had—and that was to accept the Mexican commercial driver's license in the United States, and to correlate that to the NAFTA that we had then, and I assume the NAFTA that we have today? Does the Bush administration's stand in position still, in NAFTA, as we see it today?

Ambassador YERXA. Well, let me explain how it operates. The NAFTA provisions that were originally negotiated required this. But let me explain further how it interrelates with——

Senator EXON. Required what?

Ambassador YERXA [continuing]. With our Federal and State safety regulations. What is required is that Mexican trucks and drivers meet our Federal standards; and those do remain in effect, for Mexican as well as Canadian drivers and vehicles engaged in interstate or foreign commerce in the United States; including age requirements and driver hour limitations.

Now, the Federal regulations on this cover requirements from, first of all, commercial driver's licenses, including: Knowledge and driver skills testing; financial responsibility; driver qualification, such as minimum age and language ability; vehicle safety, includ-

ing front brakes and other equipment specs; operations, including hours of service; and finally, vehicle maintenance and periodic inspections.

In other words, while 18-year-old Mexican drivers may drive commercial vehicles in Mexico, they are not allowed to drive in the United States until they are 21, because that is the requirement of our Federal regulations.

So, while there would be some measure of reciprocal recognition here, only to the extent that their qualifications and requirements meet ours. If they do not, they would not be permitted to operate in the United States.

Senator EXON. I guess a fair way to put that, that under NAFTA, the driver's license rules and regulations with regard to age are not changed; but, as you put it, and I think what I was trying to get at, although a commercial driver's license can be given to an 18 year old in Mexico, that 18-year-old driver could drive up to the border, but he could not, he or she could not come across the border. Is that correct?

Ambassador YERXA. That is correct. That is correct.

Senator EXON. Mr. Yerxa, I guess that you know I am a cosponsor and a supporter of S.J. Res. 36, the Riegle resolution on truck safety. I had encouraged this committee to endorse the resolution, as a part of the NAFTA committee process.

Would the Clinton administration support an effort to enact S.J. Res. 36 independently of NAFTA?

The resolution simply states that, "In harmonizing discussions on truck weight, length, and safety standards, the United States should defend its safety regime."

How do you feel about that? And do you think it is a problem?

Ambassador YERXA. Well, I am not the Department of Transportation. But I certainly would assume, and I can get an answer for you very quickly, Senator, I would assume that, that will be the U.S. position, in any such discussions anyway.

I mean, I think there may be a very strong interest on our part, in seeing Mexico's standards made more compatible with ours, because it would allow U.S. companies to operate more freely.

For example, there were restrictions in Mexico that concerned U.S. companies, about the type of fuel that U.S. trucks were able to use. And I think the Mexican Government has made some accommodation in that respect; because our truckdrivers were at a disadvantage in being able to use a certain kind of fuel in the United States, but not in Mexico.

I do not think there is any question but that what we want to do is provide for some greater harmonization of transportation; but do so, at U.S. standards. So, I would assume, and I cannot speak for Secretary Peña, but I would assume that the administration would be supportive of that kind of a principle.

Senator EXON. Thank you. Although, Mr. Chairman, this is not an agenda of today's hearing, I want to take this opportunity, if I might, to digress for just a moment.

Mr. Yerxa, Nebraska is one of the Nation's leading producers of edible dry beans. Nebraska bean farmers are concerned that the terms of NAFTA will actually shrink American access to potentially huge American bean markets.

Now, there have been lots of accommodations to lots of different groups in agriculture and elsewhere. What reassurance, if any, are you in a position to give me, or are you familiar with, the concerns of the dry bean producers, especially in Nebraska and elsewhere? And can you give any assurances to us, of any consideration that might be given them for what I think is a legitimate concern?

Ambassador YERXA. I think it is a legitimate concern as well, Senator. And the administration certainly would want to undertake an effort to accelerate tariff reductions.

And, in fact, if you look at the statement of administrative action that the administration submitted as part of this NAFTA legislation, we do say that, "In exercising the authority to accelerate staging of tariff cuts, the administration will, as a matter of priority, consider requests from interested private sector groups, and that we would give special priority in negotiating the acceleration of reductions for products where Canadian or Mexican duty is substantially higher than the U.S. tariffs: 'Such as: Dry beans, bedding components, cream cheese, flat glass, major household appliances, potatoes, and wine.'"

Now I do have to say that, you know, I have seen some statements recently of people suggesting that, by making those kinds of commitments to American producers, to help us get tariff reductions in the future, the administration was somehow trying to buy votes for NAFTA.

What we were trying to do was provide assurances that under this agreement, we are going to push for greater benefits for U.S. companies and U.S. producers, by getting the Mexican tariffs down.

The one point I would make, Senator, is that there is no question that, even though we do not get complete parity with Mexico on dry beans from the beginning of this agreement, we are substantially better with the NAFTA than without it. Because without it, the disparity will remain as it currently stands, indefinitely into the future.

What NAFTA gives us is, not only a staging of reduction of those tariffs, ultimately, to zero, but a process by which we can accelerate that staging. And that is true for all these other products, as well. That is not an attempt to buy anything, other than to get Mexicans to buy more American products. And we assume that, that is something the Congress would strongly support.

Senator EXON. Well, heaven forbid that this Senator brought up the matter of any hint that anyone was bought off, in any way, shape, or form.

Ambassador YERXA. I was not meaning to suggest that, Senator.

Senator EXON. I did not bring that up. I simply want to ask one more question, and let me ask it in this fashion: One of the selling points that I have seen made recently, that I believe many people of the United States have come to accept as very, very important.

And that is this oft-repeated statement today, by everybody from the President of the United States on down, is that we have got really nothing to lose here. Because if this thing does not work out, then we have this 6-month magic escape clause that could come into play.

What would be—if we approve NAFTA, as I suspect we will—what would you think would be the chances that, regardless of how

the outcome of this whole situation is, that we would ever enact or enforce a 6-month escape clause? One in 100; 1 in 1,000; 1 in a million; 1 in a billion? What would be your guess, as to what the chances are for us to ever take that action; since it has been talked about a great deal?

Ambassador YERXA. I am not going to give you odds, Senator. I am going to—let me say the following thing: That provision is there, in case this agreement ends up, contrary to all of the evidence, having negative effects for the United States.

I am utterly convinced, as is the President, that in 3½ years, when the administration submits its report as required under this legislation, to the Congress, of the overall effects on the U.S. economy, on production, on jobs, on employment, on our trade, the report is going to be very positive. And so, I am convinced the Congress is not going to want to withdraw from this agreement.

But that opportunity exists. The United States has that right. The Congress can vote, by majority vote, at any time in the future, to repeal the enabling legislation for this agreement, if the experience is negative for the United States.

You know, when the United States entered into the Caribbean Basin Initiative, there was a lot of testimony suggesting that it was going to lead to a flood of low-cost imports into the United States, and steal American jobs. Today, we have about a $1.5 billion trade surplus with the Caribbean, and the experience has been very positive for American jobs and American companies.

I do not believe the Congress is going to want to withdraw from this agreement; but if the Congress makes that decision, that right exists.

Senator EXON. You would agree, then, that for whatever reason, it is not very likely that, that 6-month magic escape clause would be used?

Ambassador YERXA. I do not believe that the United States is going to want to withdraw from this in the future.

Senator EXON. Thank you.

Ambassador YERXA. But as I say, we will have that right.

Senator EXON. Thank you, Mr. Ambassador. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Bryan.

Senator BRYAN. Mr. Chairman, thank you very much. Let me ask unanimous consent that my statement be made a part of the record.

The CHAIRMAN. Very good.

[The prepared statement of Senator Bryan follows:]

PREPARED STATEMENT OF SENATOR BRYAN

I commend the chairman for holding this hearing on the impacts of the North American Free Trade Agreement (NAFTA). I believe it is important that we explore the ramifications of this treaty on consumer and environmental safeguards within this committee's jurisdiction.

Mr. Chairman, as you know I have made it one of my legislative priorities since I came to the Senate to increase the corporate average fuel economy (CAFE) standards. But I must praise you for your work in this area as most members I have talked with consider you the "grandfather" of CAFE.

This committee has a proud, bipartisan tradition of fighting for consumer protection and auto safety. Senators Danforth and Gorton should be acknowledged for

their tremendous efforts in improving consumer safeguards whether it is requiring airbags in cars or improving toy labeling.

I am concerned that we will be voting on this treaty without fully comprehending its implications on these type issues. There are many ambiguities about how NAFTA will affect a great number consumer protections. What does it mean when NAFTA calls for "harmonizing" the corporate average fuel economy (CAFE) of Mexico, Canada and the United States?

As you know, the United States imposes a CAFE standard of 27.5 miles per gallon as a fleet average for cars sold in this country. Mexico and Canada have no similar standard. What does "harmonizing" mean when one country has a standard of 27.5 miles per gallon and the other two countries have no such standard?

Additionally, as I understand the treaty, if Mexico or Canada challenged our CAFE standard as being prejudicial or discriminatory then an international tribunal of trade experts will sit in judgement on our standards. I have been informed that the Europeans are challenging our current CAFE standard under GATT.

What assurance can the administration give us today that this treaty will not lead to a weakening of our consumer protection standards? Since our country clearly has the highest safety and consumer standards in this hemisphere, it appears that any harmonizing will undoubtedly lead to a lowering of our standards.

While I have great faith in the intentions of this administration, how can we be assured that future administrations won't work to undermine the standards we have worked so hard to implement?

These are serious concerns I have that I look forward to hearing a response from today's witnesses. Again, Mr. Chairman I praise your scheduling this important and timely hearing.

Senator BRYAN. I appreciate that, Mr. Chairman.

Mr. Chairman, let me thank you for convening this hearing; and to welcome you, Mr. Ambassador, for purposes of some questions that I have.

Mr. Ambassador, this committee has had a long and a very proud and a bipartisan history of very strong vehicle safety standards. The chairman has been, since the inception, one of the leading advocates of CAFE, and the ranking member has been working on vehicle safety standards long before I became a member of this body. And the ranking member of the subcommittee which I am privileged to share has been an enthusiastic advocate.

I am unclear as to how this harmonization process works. It is my understanding that Mexico does not require airbags. Is that your understanding as well, Mr. Ambassador, with respect to automobiles?

Ambassador YERXA. I would have to check that for you, Senator. You may very well be right.

Senator BRYAN. Well, let us just assume for purposes, that Mexico does not require airbags. I believe that to be the case. That Mexico does not have a side impact standard; that Mexico does not have a rollover standard; and that Mexico does not have the CAFE standard. I believe that those are accurate statements, and for purposes of my question, Mr. Ambassador, I ask you to assume that that is the case.

Now assume that Mexico then asserts that these are somehow prejudicial; and, as I understand it, would then have the ability to trigger some type of proceeding before what I think Senator Danforth characterized as the trilateral body, in which this harmonization process would work.

Tell me, if I am correct in that assumption; and if not, how does this harmonization process work? Because we clearly have one country that has a series of standards; the other country does not. How are these to be harmonized?

Ambassador YERXA. The only mechanism for harmonizing standards in the future, under this agreement, is through future negotiation between the countries, about standards that we want to jointly adopt, as a means of removing or reducing impediments to trade.

But ultimately, the United States does not have to enter into that kind of an agreement. We certainly would not be vulnerable to any kind of dispute which would subject the United States to a requirement that we change impact standards, rollover standards, airbags, or anything else. The more likely outcome of those discussions, and those negotiations, is that Mexico, for purposes of its own domestic increased awareness of the need for those kinds of safety standards, is going to adopt them in Mexico.

But there is no possibility, Senator, of a dispute which would result in requirements for us to change those standards in the United States. The process, under the agreement, is for the three countries, in an intergovernmental body, involving the respective government officials of the three countries, to talk about ways of moving toward greater product standard harmonization in the future.

If we ever reached such an agreement, the Congress would have to implement those changes. But more importantly, I do not think any future administration is going to want to go and negotiate down the kinds of standards that you are talking about.

I think it is possible that, in the future, Mexico is going to want to elevate them up; because it wants to be part of an integrated North American market.

Senator BRYAN. Mr. Ambassador, I want to be clear that I understood your response. Would it be fair to say then, that under NAFTA, it is not possible legally, that there is no power to compel a compromise of any of these safety standards and CAFE standards? That, that is not possible, legally? Cannot occur?

Ambassador YERXA. It cannot. What is occurring under NAFTA is, as we have presented it to the Congress in this legislation, with respect to CAFE standards; that is, the change in the treatment of Mexican production, for purposes of our CAFE laws.

But as far as the CAFE standard itself, our ability to raise it in the future, our ability to change it in the future, our ability to change our own health and safety laws, and our ability to maintain the ones that are on the books, there is no power under this agreement to compel the United States to change its laws.

Senator BRYAN. So, stated otherwise, in the absence of affirmative action by the Congress, these standards could not be changed? I am referring now to the vehicle safety standards, and the CAFE standards. Would that be correct?

Ambassador YERXA. That is correct.

Senator BRYAN. Now, with respect to the calculation of CAFE. Automobiles that are manufactured in Mexico, and sold in Mexico—not a part of a sale in the United States—for purposes of averaging; as you know, CAFE stands for corporate average fuel economy. How is that treated, under the NAFTA provision; and what change, if any, occurs from the present treatment of that type of a transaction? This would be a sale in Mexico, as opposed to a sale in the United States, of a product manufactured, of an automobile manufactured in Mexico.

Ambassador YERXA. I understand. Just one second, please.

It has no effect whatsoever, if it is sold in Mexico. The only effect on how it is counted, for purposes of our corporate average fleet economy, is if it is produced there and sold in the United States—meeting the content requirements of the NAFTA, by the way, which are far higher than they were under the auto pact—then it is counted, for purposes of that company's fleet, it is counted as part of the domestic fleet, not as an import.

That is the only difference. But certainly, Mexican production sold in Mexico does not alter or reduce the, or alter or change the average at all.

Senator BRYAN. Let me give you a hypothetical, if I may, that deals with this issue, just to make sure that I am clear on your response.

The average today, as you know, is 27.5 miles per gallon. And that is a fleet average, based upon manufacturer.

Let us suppose, for sake of argument, that one of the Big 3 automakers in this country all of a sudden sold a great many automobiles, manufactured in Mexico, to the Mexican market; and that they were very fuel-efficient vehicles, that they were smaller vehicles. And so, in effect, if you combined the sale in Mexico with the sale in the United States, the effect would be to depreciate the corporate average fuel standard in the United States, by reason of these.

Now, as I understand your response, you are indicating that for purposes of calculating the corporate average fuel economy standard, that the sale of automobiles manufactured in Mexico, to Mexico, in the Mexican market, would not be calculated in that overall corporate average.

Ambassador YERXA. That is correct. What you would count is the total sales of that company's fleet in the United States. And the question is, What is counted as part of their domestic fleet, and what is counted as import?

But the sales in Mexico would have no impact. They would not depreciate the United States, you know, the possibility that U.S. cars could then meet a lower standard, and you could average them with the Mexican sales.

Senator BRYAN. Mr. Ambassador, just one last question. In the broader context, as I am understanding your response, the harmonization process is akin to a meet and confer and discuss. Am I correct? In its broadest sense, not referring now specifically to vehicle safety standards and CAFE standards.

Am I clear, that the harmonization process itself has no self-executing authority to change any provision of American law, without the Congress having affirmatively changed it; or if it is a regulation, the appropriate Federal regulating authority making a change in a regulation that exists?

Ambassador YERXA. Senator, you are correct. I should state, sort of as a background to this, the fact that one of the reasons we look for these kinds of opportunities to consult and move toward standards harmonization with other countries in various trade agreements—whether it is under the GATT or under the NAFTA—is, U.S. companies and U.S. producers come to us and say, "We meet substantial problems in exporting to foreign markets, because we produce for one standard in the United States; and then, when we

export it to their country, we have to meet an entirely different standard." Sometimes, it is not even a lower standard; it is just calculated differently.

I think the best example is, you know, in Germany they have a supposed health standard, with respect to the height level of the keyboards for word processors; which is supposedly designed to prevent——

Senator BRYAN. Carpal tunnel syndrome.

Ambassador YERXA. Yes, exactly. And their standard is different than ours. And we have been working with Germany, to see if we cannot achieve a more harmonized standard. But ultimately, that is one that would have to be adopted by both countries, as a sovereign decision.

That is the kind of process we are talking about under NAFTA. And the opportunity it presents is to do that; but there is nothing that compels the United States to agree to a downward harmonization.

Senator BRYAN. Mr. Chairman, I thank you. Mr. Ambassador, I thank you for your response.

The CHAIRMAN. Thank you. Senator Stevens.

Senator STEVENS. Thank you. Mr. Ambassador, it is nice to see you here.

Ambassador YERXA. Thank you, Senator.

Senator STEVENS. How long have you been involved in this process, now?

Ambassador YERXA. Well, I have been involved in NAFTA since about January. I have been involved in trade a little longer than that, but——

Senator STEVENS. I mean in the negotiation process, you have been involved in this agreement since January of this year; right?

Ambassador YERXA. Yes, I became Ambassador Kantor's Deputy in January.

Senator STEVENS. Now, you are familiar, I take it, with the current export restriction, as far as Alaskan oil?

Ambassador YERXA. I am, yes, Senator.

Senator STEVENS. And you are familiar with this agreement's provisions on export and import restrictions, as far as petroleum products are concerned, generally? There is a section 603(3)(b)? I have had a letter down there about 3 or 4 weeks, or more. I am trying to get an answer to that letter from you today, in effect.

Have you reviewed the impact of this agreement on the restrictions? Can we export oil from Alaska to Mexico now, under this agreement?

Ambassador YERXA. I must admit, Senator, let me refresh my recollection here for a moment with my counsel here. We are a little behind in our mail, and I apologize for that. But I am sure we are trying to respond rapidly. Let me just have 1 minute here.

[Pause.]

Ambassador YERXA. I am going to have to doublecheck this with you, Senator, but it is my understanding—and if you look at the implementing legislation, this is reflected—that we do not change the oil export restrictions. I will have to confirm that for you, though. Because if we do not change it under our implementing

legislation, then it would not change. The implementing legislation governs whether or not that can be exported.

Senator STEVENS. In other words, your statement is that you cannot be, in effect, amending existing law by implication through the agreement itself?

Ambassador YERXA. That is correct.

Senator STEVENS. If there is a provision in the agreement that is contrary to existing law, and is not specifically covered by the authorizing legislation, it is ineffective?

Ambassador YERXA. U.S. law prevails. And the agreement, there is a specific provision in the agreement, I mean, in the implementing legislation. Let me just—in section 102, it says, "United States law to prevail in conflict. No provision of the agreement nor the application of any such provision to any person or circumstances, which is inconsistent with any of the law of the United States, shall have effect."

And that is the standard construction of trade agreements. It is the same with respect to the previous Canada agreement, and the 1979 Trade Agreements Act.

Senator STEVENS. Well, it was my understanding it was just—and I do not have a written opinion, but it was my understanding, from talking to some people in the oil and gas industry—that that impact of article 603(3)(b) was, in effect, that if we wished to do so, we could export oil to Mexico. But that, in theory, the restriction against exporting Alaskan oil from Alaska would still apply to that oil.

There is no such interpretation in your trade representative group? It is my understanding that was an informal interpretation given to someone by your trade representative group.

Ambassador YERXA. Senator, my understanding is that, while that may give rise to the right to do so, it does not compel the United States to lift that restriction. So, if the United States wants to maintain an export restriction on oil, we are empowered under this agreement to do so. We would not be inconsistent with the agreement, by doing so.

Senator STEVENS. You are familiar with the bill that has been submitted?

Ambassador YERXA. Yes, I am.

Senator STEVENS. One of the reasons I am opposed to this is that we have not been privileged, really, to have too much to do with that legislation, and have no attempt to amend it. As a matter of fact, did not even see it, until it was so prepared that it was not subject to our amendment.

I do not see much reason to read it, if I cannot have any impact on it. In this regard, that is.

Are you telling us now there is nothing in this legislation that affects the export of oil from one State of the United States to Mexico? Or Canada?

Ambassador YERXA. That is correct, Senator. And with regard to the preparation and submission by the President of this legislation, the process which we followed with all of the committees was to provide drafts of the legislation well in advance of the President's introduction; and to sit down with the respective committees, work through the drafts.

We had extensive, essentially, nonmarkup procedures in several of the committees, on provisions of the legislation. So, there was a recognition and a desire to have the full participation of the committees, in the drafting of the legislation.

We did not submit this until after all the committees had had the legislation, the draft, for some time, and we had worked out amendments with the various committees.

Senator STEVENS. But normally, those of us not on those committees—because I am not on the Energy Committee anymore, but I would have an opportunity to amend it, offer an amendment, when it was on the floor.

Answer this question for me, please: My understanding, and I could be misinformed again, but, that Canada and Mexico are treating, in their legislative process, this agreement as a treaty; is that correct?

Ambassador YERXA. I am not sure how they, in their domestic procedures, what the distinction is between an executive agreement and a treaty; but I know that they are both ratifying it under their normal procedures for ratifying trade agreements, which is the same thing we are doing.

We do have a different procedure. We have a fast-track procedure, which was set forth by the Congress first in 1974. It has been reenacted several times, and we have followed that procedure.

Senator STEVENS. Has that ever been tested, in court? Has the constitutionality of evading the Treaty Clause in the Constitution been tested in court?

Ambassador YERXA. I am not sure, Senator. Not that I am aware of.

Senator STEVENS. Me, either. I have not been able to find any. Why is this not a treaty, Ambassador? I mean, the Constitution says, treaties should be submitted to the Senate. This is as I understand it, and the New York Times reports it is being treated in Mexico and Canada as a treaty. But does the Executive have the right to call a treaty an agreement, to avoid the two-thirds ratification by the Senate?

Ambassador YERXA. Senator, this is an Executive agreement that is being submitted to the Congress, and implemented by the Congress under the provisions set forth by the Congress since the 1974 Trade Act; that is, the fast-track procedures.

Because the Congress has the power to regulate foreign commerce; and under this arrangement, the administration has to notify the Congress of its agreement within a certain period of time, draft the implementing legislation, submit it to both bodies of Congress for implementation.

I think one of the major differences between this and treaties is that in this particular field, the field of foreign trade, there is a clear, full constitutional power in the Congress to amend and change U.S. laws to implement the agreement. And that is something that has to be acted on by both Houses of Congress.

Senator, we are following the procedures that have been mandated and set forth for these types of agreements for almost 20 years.

Senator STEVENS. And what other agreements have been approved by this?

Ambassador YERXA. The 1979 Trade Agreements Act, that was the Tokyo Round Agreement, submitted under the Carter administration; the U.S.-Israel Free Trade Agreement, submitted by the Reagan administration; the U.S.-Canada Free Trade Agreement, submitted by the Reagan administration; and this agreement.

Senator STEVENS. And none of them have been tested for constitutionality; correct?

Ambassador YERXA. Well, I think many of them have been challenged in court on various grounds; but since Congress enacts the legislation, clearly, the legislation is constitutionally valid.

Senator STEVENS. Last, let me ask you this. What impact does this—let me read to you from a statement made by Mr. Jay Hair, from the National Wildlife Federation: "Our own careful evaluation of the NAFTA text, and the newly negotiated environmental side agreement, indicates that local, State, and national environmental laws will not only to be protected, but a new mechanism, the Trilateral Commission on Environmental Cooperation, will act to assure that these laws are coordinated so as to raise and help enforce environmental standards.

"We agree that defeating NAFTA will do nothing to protect the environment. In contrast, the passage can begin a constructive process of environmental improvements."

What status does this environmental side agreement now have, under this legislation? Is it incorporated in the legislation?

Ambassador YERXA. The agreements on labor and environment are, they are not trade agreements in themselves; they are Executive agreements on environmental and labor matters.

We set out to negotiate these arrangements in a way which would not require the United States to alter or change its environmental or labor practices, or laws. The commitments which we entered into are commitments to enforce those laws in a way that the U.S. Federal agencies are currently required to enforce them; and that all States enforce them.

Senator STEVENS. But respectfully, my question is this: Is it now incorporated in this legislation?

Ambassador YERXA. Yes. What I was going to say is that, the entry into force provision of the legislation clearly requires the President, before proclaiming the NAFTA in force, to ensure that Canada and Mexico have implemented and entered into the side agreements.

Senator STEVENS. But you are familiar with the letter that was originally sent to Congressman Bill Archer, from Ambassador Kantor?

Ambassador YERXA. Yes, I am.

Senator STEVENS. That is, that they would not be ratified as trade agreements?

Ambassador YERXA. That is correct, and there is——

Senator STEVENS. Your position now is it is not being ratified as trade agreements, but being ratified as side agreements to trade agreements; is that correct?

Ambassador YERXA. They are not trade agreements, per se, being ratified. But under the fast-track procedures, the Congress may enact those measures which it considers necessary and appropriate to implementation of a trade agreement.

In this case, the decision is for the Congress.

Senator STEVENS. So, I can fit almost anything in this bill that I wanted, as long as Congress or the Executive called it something that was necessary to implement a trade agreement, and it would be subject to the fast track; is that your position?

Ambassador YERXA. If it is considered by the—these are rules of the Senate and the House—if it is considered by the Senate to be appropriate to the implementation of the agreement.

In this case, what we are asking for implementation of, with respect to the side agreements, is authorization of funding for U.S. participation in these commissions; and an entry into force provision, which requires that Canada and Mexico adhere to these agreements before we implement the NAFTA.

Ultimately, it is a decision of the Senate, as to whether that is appropriate to implementation of the trade agreement.

Senator STEVENS. I am not going to belabor it, Mr. Ambassador. I do think that it is unfortunate that we find ourselves in a position that there has been such an extreme interpretation of the fast track.

I received a copy of the letter that Mr. Kantor sent to Congressman Archer some time ago, and was prepared to respect it; and as I told Ambassador Kantor, prepared to support NAFTA under those circumstances. I am not prepared to support it now.

But the real problem is that, every time I read it, I find things in there that I do not think the American public understands, or will appreciate. One of them is that I think that, for the convenience of getting this kind of an agreement approved, the Executive calls this an "agreement" in the United States, but it is a "treaty" in Canada and Mexico; and I think that, under the Treaty Clause of the Constitution, this is still a treaty.

We will probably just have to have a test of that after this passes, I think. Thank you very much.

Senator EXON. Mr. Chairman, to follow on, could I have 10 seconds?

The CHAIRMAN. By all means.

Senator EXON. Very, very much on point with what the interesting point brought up by my colleague from Alaska. First, let me ask a question; I was not here when the Panama Canal Treaty was ratified, but that did require a two-thirds vote; is that right? That was not a majority vote, that was two-thirds; right?

The CHAIRMAN. Right.

Senator EXON. Is it your opinion, listening to the questions and your answers, by Senator Stevens, Mr. Ambassador, that in essence the Senate, in its wisdom of lack thereof, gave up the two-thirds requirement when we agreed to the fast track?

Ambassador YERXA. Senator, the—I am not suggesting that the Senate gave up that prerogative. I am suggesting that, historically, trade agreements have not been treated the same way as the Panama Canal Treaty by Congress; and the procedure that Congress mandated for trade agreements, which has now been followed in every major, every major trade agreement since 1974, is for this exact procedure that we have followed, which is:

The President notifies the Congress 90 days before entering into the agreement; then submits a draft of the agreement and gives

the Congress 90 days to consider that draft; then the President signs the agreement, and submits an implementing bill which approves the agreement. And the specific standards are set out right in the Senate and House Rules.

This is precisely what we have followed in this instance. And that is because trade agreements involve more than simply ratifying a treaty, or even approving an Executive agreement. They involve legislative measures to implement that agreement and enforce it, and that is why we have that.

Senator EXON. Well, I am not trying to badger you on this.

Ambassador YERXA. No, I understand.

Senator EXON. But then, it seems to me what you are saying is whether it was as a result of the fast track approved for NAFTA, or whether it was the fast track that was approved previously by the Congress, some combination of that in the wisdom of the House or Senate, or lack thereof, really got us to the position where this could be approved by majority vote only. Is that right?

Ambassador YERXA. A majority vote of both Houses; that is correct.

Senator EXON. Thank you. Thank you, Mr. Chairman.

The CHAIRMAN. Senator Hutchison.

Senator HUTCHISON. Thank you. Mr. Ambassador, I would like to talk for a minute about implementation.

I am very optimistic that NAFTA is going to pass, and I am, of course, very enthusiastic about it. And I would like to know what the administration is planning to do to coordinate implementation; and let me give you an example of a problem that I see coming, that will affect the ability of the treaty to do what we want it to do, which is, increase trade.

We have long waiting lines at the border in the major cross points right now. It is one of the environmental problems that we have. Cars that are sitting for 2 hours, emitting fumes, are causing an environmental problem at the border.

And one of the reasons, among many, but one of them is that there is not a good coordination between Immigration and Naturalization, and Customs; where you will have empty booths that are not working. You will have one or the other group taking coffeebreaks, or doing something else.

Do you have a plan where you will get Department of Justice, and Treasury, in this instance, together; or the Department of Transportation, to look at the infrastructure needs; to make sure that in implementation, we do address the waiting lines, the environmental problems that come from that? And if so, what is the plan?

Ambassador YERXA. It is a very good point, Senator, because this is, as cross-border trade and cross-border passenger travel increases, it clearly places serious strains at the border on those kinds of facilities, and creates the problems you refer to.

Now, I must admit, I am not a thorough expert on Customs and Immigration procedures. I have worked somewhat with the Customs Service and Immigration people on this particular legislation.

One of the problems, clearly, is to modernize and improve our processing procedures; and in fact, in this implementing bill, you have a title on Customs modernization, which is designed precisely

to do that: To speed up and facilitate the processing of goods by Customs. That means goods traveling in commercial vehicles, as well as Customs inspection of passengers.

And the same kind of modernization efforts are being undertaken by INS. There is, I think, a much closer cooperation between the two, in this administration. And we are looking for ways of facilitating that. I think, if you look at the Customs modernization procedures in this bill, they are a big step forward in that direction.

Clearly, we are going to have more and more trade; we are going to have more and more exports, and more and more imports. It is a fact of life, and we have to find ways of bringing Customs into the modern day.

This Customs Modernization Act, by the way, was something that was worked on by both Houses of Congress in the last Congress, and I think it is a big step forward in that direction.

Senator HUTCHISON. We have a situation where I am told the Secretary of Transportation was on the border, and saying that there was probably no need for more infrastructure highway funding than we now have, that the capacity is probably sufficient.

And I do not think that is right. I think we are going to need to do some infrastructure upgrading; and I think we probably have the money already in ISTEA, but it would have to be prioritized for the areas where the borders are strained.

My question is: Is there a plan for implementation, that would bring together the different entities that are involved? Obviously, there is a trade issue here. But you are not over Transportation; there is a transportation issue. You are not over Customs or INS; but there are those issues.

Is there any plan, in implementation, to have a coordination of all of the affected agencies and Departments, that would bring them together? And say, "Okay, we have got cars sitting at the border for 2 hours. It is an environmental problem; it is an infrastructure problem; it is a Customs and Immigration problem."

What is being done to plan for that ability to coordinate?

Ambassador YERXA. Senator, rather than give you what might be an incomplete answer because of what I readily admit is an insufficient knowledge of exactly what is being done between these various agencies, and between INS, Customs, the Transportation Department—by the way, you also have animal and plant inspection by the Agriculture Department at the border; and you have inspection by FDA. So, as you point out, it is a multitude of agencies performing very important functions—I would like to, maybe, give you a more detailed answer in writing, and see if I cannot get back to those agencies this afternoon, and see if we cannot give you a more thorough answer of what is in the planning stage now, and what kinds of efforts they are undertaking.

I know that there have been interagency working groups on this; and I think there is progress being made. But I would rather get you some detail, rather than give you an incomplete answer.

Senator HUTCHISON. I appreciate that, and I understand that most of your responsibility is getting the treaty, first negotiated before you came in, and now ratified. So, I do understand that, maybe, it is not specifically in your area. But I certainly think it is going to affect trade.

And I would like for you to get that answer, and also make sure that there is every agency involved that would have an impact on the expediting of free trade; because that is in your area. And I think it is going to be very important for the success of NAFTA, when it is passed; and I am going to make the prediction that it will be. Thank you.

Ambassador YERXA. If I could just mention one other point, Mr. Chairman? I know this is an issue in which the chairman takes intense interest: That is, the greater allocation of resources to enforcement of rules and regulations regarding things such as transshipment, rules of origin; the problems associated with potential circumvention by importers or countries of the provisions of this kind of agreement.

We have been working with Customs, with the Treasury Department, to enhance and increase the number of inspectors and of officials available, for those kinds of efforts; and I believe, and I can get the details for you, Mr. Chairman, I believe that we have recently announced increased funding and increased staffing in those areas. Because I do know that this has been a concern of the committee; for example, in the textiles field and in the agricultural field, where these rules of origin need to be strenuously enforced.

Senator HUTCHISON. Thank you.

The CHAIRMAN. Come on, Mr. Ambassador, you do not have to check with Treasury. Check with yourself. You folks promised, in a letter on June 28, that you were going to put the Super 301 on a one piece of legislation, some legislation here, this year. I can show you the letter. Go ask Ambassador Kantor to get it out; he signed it.

Now, when Senator Baucus in the Finance Committee tried his best to put 301 on there, you folks just fought it like tigers. And we do not have any 301. I mean, we get all of these promises, promises. This is the same act, same scene. That is why the United States is sort of going out of business.

And we get a little, you know, oh-so-proper, oh-so-correct, oh-so-unctious, that "We gave the authority and the Executive had nothing to do except to take the authority given." That is totally turned around. The Executive comes and fixes the vote, and they would not even call that thing.

I see that smile on your face. Let the record show, the gentleman smiled. [Laughter.]

And you ought to smile, because we live in the real world. And they fixed that vote. And they get the fast track, which I opposed. But they get it. And then, when they finally get it, "Oh yes, reasonable," you have got everybody voting for it.

Specifically, since the bell has rung, I have got one question. We will have to go vote, and get these other witnesses.

You know, you mentioned Ambassador Kantor coming and testifying before this committee. And at that particular time, I mentioned that Mr. Iacocca ought to get that ad off the TV, about the Japanese and the Europeans are against NAFTA; they are going to be on the outside looking in. And I put in there how the Bank of Tokyo was bullish on NAFTA; how the Europeans, Volkswagen was putting in a billion dollars; how Rho Tae Woo, the Koreans and everybody else were for it.

Now we have got the record made today, and I asked Ambassador Kantor to give me one article. He said, "Oh, there is a lot of articles, periodicals," whatever it is. I said, "Produce one." It showed me that. I knew otherwise.

You know, you are nettled with this idea of fast track that you cannot amend; while you are watching the executive branch amend it every 10 minutes with, whether peanuts, popcorn, candy, what is it? You have got bulgur wheat or some other kind of wheat, and some other kind of sugar, and some other kind of citrus.

Can I get a Cooper River Bridge? We have got a Federal highway and a bridge that joins it, and it goes from my home into the city of Charleston; and it is propped up by wooden blocks. What about a bridge?

I notice you have got trade centers and different other goodies. I could be more friendly, maybe. [Laughter.]

Ambassador YERXA. How much more friendly? [Laughter.]

The CHAIRMAN. Well, reading from the Financial Times as of just a little while ago here this morning:

> Businessmen and diplomats from the EC and Japan say a rejection of NAFTA would probably have a negative effect on their trade and investment with Mexico. While NAFTA discriminates against European and Asian companies in investment rules and tariffs, the treaty gives Mexico guaranteed access to the U.S. market and would increase growth, making the country more attractive to outside investors.
>
> Without the treaty in place, it will be difficult to continue investing in Mexico.

Mr. Ryuhei Kato, the head of the Japanese Chamber of Commerce in Mexico City, says:

> It will change the whole perspective of the Japanese presence in Mexico.
>
> Mr. Masasumi Yamamoto, Japan's commercial attache in Mexico City, concurs. Some Japanese companies are considering investing in Mexico, to export to the United States. In this sense, the failure of NAFTA would lessen interest in the country, and affect investment negatively.

I could go on and on, but I mean, I have been following this for a long time. And they went to Japan and Europe, you can read it in the Mexican newspapers, you can read it in Clyde Prestowitz' book; and they said, "Well, we do not have the investment protection features that you have got in chapter 11, in NAFTA. You get a NAFTA with those kind of investment protections, you have got a partner. We will invest, and we are coming."

And the biggest sucking sound will be that of the investment going into Mexico, as a free trade platform into the richest market. That is what we are talking about. And that is why, you know, you obviously get a little frustrated when you cannot amend, and they are amending every minute.

But the misrepresentation is totally out of the whole cloth; and I will ask the Special Trade Representative Office one more time to furnish me those articles that says that the Japanese and the Europeans oppose NAFTA because they will be on the outside looking in. That is totally out of the whole cloth. The exact opposite is true. The exact opposite. And you folks know it.

I know your track record. You are smart as get out, and you worked over there with my friend, Danny Rostenkowski, and you know this trade picture backward and forward.

And you know Iacocca is absolutely a fraud, in making that statement. I asked him to lift that thing off, and he is running around town, now that y'all have got the vote, chortling to himself.

But he should not be doing it on the misrepresentations of that kind.

Do you have a comment?

Ambassador YERXA. Well, for the record, Mr. Chairman, I hope there is—there is nothing wrong with smiling, but I do not want my smile to indicate that I agree with that assessment.

The fact of the matter is that this is going to make the North American economy stronger. It is ironic to me that——

The CHAIRMAN. Well, I know, but I did not say stronger or weaker. I talked about Iacocca. You are talking about something different.

Ambassador YERXA. I do not think Mr. Iacocca is inaccurate. I know that the Japanese have filed a statement in the GATT, expressing concerns about NAFTA; because they believe that the NAFTA will distort trade in North America to our benefit, rather than to their benefit. Because it gives us trade preferences in Mexico's market.

Sure, it lets Japanese—Mexico is going to let Japanese companies invest in Mexico; and defeating NAFTA will not change that, Mr. Chairman. What it will do is——

The CHAIRMAN. Oh, it would change it markedly. I just read it. The fellow says that, "Look here, if you do not get NAFTA, defeating NAFTA will definitely change it." That is not only the trade representative, but the head of the Chamber of Commerce back in Mexico.

Ambassador YERXA. But Mr. Chairman, that is not because of what Mexico is doing under NAFTA. That is because Mexico has decided unilaterally to open up its market, and to provide a safe climate for foreign investment, because Mexico is going to modernize its economy.

I think where we differ with you is in strongly believing that, ultimately, this kind of an agreement, with a stronger, more economically viable Mexico, is good for the United States. And keeping Mexico an unsafe environment is foreign investment is not going to help the United States.

The CHAIRMAN. Well, thank you a lot for your appearance. I apologize, but we have got to make that rollcall. The committee will be at ease. We will be right back.

Ambassador YERXA. Thank you, Mr. Chairman.

[A brief recess was taken.]

The CHAIRMAN. The committee will please come to order. We are delighted to welcome this afternoon, Ms. Joan Claybrook, the president of Public Citizen; and Mr. Dan Seligman, the trade representative of the Sierra Club. Ms. Claybrook.

## STATEMENT OF MS. JOAN B. CLAYBROOK, PRESIDENT, PUBLIC CITIZEN

Ms. CLAYBROOK. Thank you, Mr. Chairman, for the opportunity to testify this afternoon.

The North American Free Trade Agreement does far more than to reduce tariffs and open heretofore closed markets. It establishes dozens of rules for limiting the goals that countries may pursue and the means that they may use, in setting health, safety, and environmental standards.

If disputes arise, under the provisions of this agreement, they will be resolved behind closed doors by trade experts, without any input from the domestic proponents of these measures.

If a NAFTA panel finds that a domestic measure violates NAFTA, and our country does not change that measure within 30 days, then the challenging country would be entitled to impose retaliatory trade sanctions.

So, while the Trade Representative may have been accurate to the letter of the law, stating that this trade agreement itself does not require any change in our standards, the rules and procedures of NAFTA most certainly do. There are many ways in which our standards can be challenged. If the challenges were successful—and of course the whole resolution process is closed and secret, even States cannot participate—then those standards would have to be changed. If we did not change the standards, or we would have to permanently pay trade sanctions. And you know what the choice would be: The health and safety standard would go down the drain.

The CHAIRMAN. And you expect the Trade Representative knows this; you and I know that.

Ms. CLAYBROOK. He knows this. He knows this very, very well.

We are going to testify this afternoon on three points. One, the pending trade challenge to our fuel economy standards to illustrate the threats that are posed to those standards. Two, the recent harmonization of commercial driver license requirements. The Trade Representative also was misleading on this—between the United States and Mexico to highlight the types of changes that NAFTA would require. And three, examples of highway safety standards that would be jeopardized by the harmonization and trade challenges under NAFTA.

When Senator Bryan asked his question about harmonization and was answered that harmonization would not necessarily change the laws, the Trade Representative did not deal with the issue of dispute resolution, which could lead to changes in the law.

First, as to fuel economy standards: The European Community has challenged, just recently, the U.S. fuel economy penalties and the gas guzzler tax under GATT, the global free trade agreement. The EC's principal contention is that these measures fall disproportionately on single line European manufacturers, even though the measures themselves are facially neutral, applying to all cars or manufacturers that violate their standards.

I think that the EC has initiated this challenge because while their fuel economy was equal or better than the U.S. manufacuturers a number of years ago, more recently they have allowed their fuel economy averages to slip below applicable U.S. standards and subsequently are paying penalties—penalties they do not want to pay in the future. And so they are taking the chance of raising this challenge under GATT, to see if they can avoid the penalties without meeting the standard. They claim that the effect of our fuel economy standard is discriminatory, even though on its face it is not discriminatory.

In attacking our efficiency standard and tax, the EC is full of all sorts of good ideas about how we could promote fuel efficiency without disadvantaging the European manufacturers. For example,

they support the notion of a carbon tax; and so did President Clinton, but without much success—the carbon tax was dumped by the Congress in the spring. The EC has also devised a novel way to calculate fuel efficiency that would allow European luxury models to satisfy the standard, even though they would still consume more gasoline than the average car sold in the United States. EC ideas have not garnered much congressional support.

This highlights the most pernicious aspect of the trade challenges to our domestic standards, and that is that these challenges tear apart domestic solutions—ideas that we have for solving our healthy, safety, and environmental problems—without putting other solutions into place.

While the fuel economy challenge is now pending before GATT—it has not been resolved—it could also be brought under NAFTA. And if a panel of trade bureaucrats, who are unlikely to be sympathetic to fuel economy goals, found that the standard violates NAFTA, trade sanctions are automatically authorized under NAFTA itself. This proceeding would be carried out in secret with no public participation, no public record, no Freedom of Information Act, and no appeal.

In the GATT fuel economy challenge, Public Citizen submitted a brief, even though the dispute panel was not obligated to consider it, we did not know the whole basis for the challenge, we did not get any information, we were not allowed to be participants. We submitted a brief anyway, just in the hope that it might influence the decision.

The prohibition of public participation in the resolution of trade challenges is a retrograde. In the United States for many, many years citizens have been allowed to play a role in the decisionmaking process. If there is anything that angers the public right now, it is feeling like they are excluded from an elite decisionmaking process between the Congress and the executive branch and the business people.

NAFTA takes us back 50 years, to a point where there were no citizen groups participating in the decisionmaking process, where they did not have any rights. The absence of rights is the most pernicious part of the NAFTA. The whole process is polluted and excludes citizens from participating. Our involvement in this process raises these issues, and gets the discussion up to a point where you get the truth, finally, as opposed to a one-sided picture.

Now, the second issue that I raise is the Mexican commercial drivers' licenses. It is a preview of what is to come under NAFTA. The DOT entered a memorandum of understanding in November 1991 granting reciprocal status to Mexican commercial drivers' licenses, despite significant differences between the licensing requirements of the two countries.

After concluding that the Mexican standards were "compatible,"—a very very nice word used frequently in NAFTA—"compatible" with U.S. standards, the Department required our States to recognize the Mexican commercial driver license and preempted them from requiring Mexican drivers to obtain State licenses or meet State standards. Moreover, the Department made clear that noncomplying States could lose their Federal highway funds if they did not do this. California tried to continue to enforce its State

standards and was told to comply with the mail or it would lose its Federal highway funds.

The International Brotherhood of Teamsters has challenged the DOT's preemption of State commercial drivers' licenses, contending, among other things, that the Department failed to follow the Administrative Procedure Act notice and comment rulemaking requirements. In particular, they complained that the Department announced that it had granted the commercial driver license reciprocity without affording the public an opportunity to comment on whether the standards were, in fact, compatible with U.S. safety standards.

This is just an example of how the Department of Transportation has taken the standards under these trade acts and adopted them in violation of the Administrative Procedure Act.

The Teamsters contend that the Mexican commercial drivers' licenses are not equivalent to U.S. ones—the Trade Representative, again, did not reveal this information—because there is no assurance that Mexican drivers have sufficient knowledge of English to understand our highway signs, to respond to official inquiries, to file reports which are critical for safeguarding hazardous materials.

There are no comparable Mexican requirements for sufficient knowledge to operate equipment safely; for special authorization to operate double and triple trailers, passenger vehicles, tank vehicles, hazardous materials vehicles, air brake equipped vehicles; and there is no adequate information exchanged to permit identification of disqualified Mexican drivers. In other words, Mexico does not have a recordkeeping system like ours for tracking violations of highway rules. If a Mexican driver violates the rules and is prosecuted, there is not a sufficient recordkeeping system so that their license would be taken away and we could find that information.

In addition, on the issue of minimum age for commercial drivers, which came up, it is true, as I understand it, that Mexican drivers would be required to be age 21 when they come in the United States. But if you have a license in Mexico and you are age 18 and there are 5,000 trucks a minute coming across the border, who is going to figure out whether you are 18 or 21? We figured that out with the motorcycle helmet laws when some States said, well, we will require helmets for people under age 18, and it was totally unenforceable. So, it is an enforcement issue on the age difference between Mexican and U.S. drivers.

This has significant implications for NAFTA. First, NAFTA requires countries to recognize compatible foreign standards, but it does not define the agency's discretion in making a compatibility determination. Yet controversial, subjective determinations underlie this concept, calling for an assessment of whether very different requirements are nonetheless compatible. And as I have just pointed out, they call something compatible which I think Houdini would not call compatible.

Second, if the Department prevails in this litigation brought by the Teamsters, it will not be constrained in the future by ordinary notice and comment procedures. NAFTA does not, by itself, prescribe any procedures to be followed by agencies in making equivalency determinations to ensure a reasoned determination or public participation. Particularly, given the controversial and inherently

subjective nature of an equivalency determination, public scrutiny and input really is essential.

Third, in granting reciprocity the Department of Transportation preempted stronger State safety requirements. It did so simply by issuing a Federal Register notice, and indicated that it would enforce the notice by withholding Federal highway funds. This illustrates the potent power of the Federal Government to compel States to abide by the Federal Government's international trade commitments.

NAFTA perpetuates this power. Its implementing legislation recognizes the Federal Government's authority to sue States to compel them to bring their actions into conformity with NAFTA. As a corollary, the Federal Government could also enforce NAFTA through its power to preempt States and withhold their funds.

The third issue that I want to mention is highway safety and motor vehicle safety standards. NAFTA creates three intolerable threats to highway safety standards. First, as the driver license scenario highlights, NAFTA requires the United States to permit drivers and vehicles to come into the United States even if they do not comply with our safety standards. As long as a bureaucrat decides, without any public input, that the standards are "compatible," the trade imperative will prevail over our safety standards.

Second, NAFTA requires the United States to work toward harmonization of safety standards. Under NAFTA, representatives of each country will participate in committees established to harmonize the standards, but these committees do not need to involve the public in their proceedings. Again, the procedures are lacking. Thus there is no open meeting requirement, no right of access to their records, no requirement the public be afforded an opportunity to comment on the proposed standards.

In this respect, these committees may diverge sharply from the domestic standardsetting process in the Congress and the Federal agencies under the Administrative Procedure Act. And I would mention again, the Trade Representative was very misleading in answering Senator Bryan with regard to truck safety standards. There are huge differentials between our truck safety standards and the Mexican-Canadian ones. Our trucks are 80,000 pounds, the Mexicans are 170,000 pounds, the Canadians are 137,000 pounds.

This differential is enormous, and within 3 years harmonization must be completed. And there is a committee to be set up and there is no right for us or anyone who is concerned about highway safety to participate. Nor are the States granted a participatory role, and this is an area where the States have been very deeply involved, even though their standards may be adversely effected by the harmonization process.

Once the three countries have agreed on harmonized standards, they must work to ensure that each country adopts the standard as its own, or at a minimum permits imports that comply with this standard. A State standard that provides greater protection than the harmonized one will be suspect and vulnerable to challenge as an unfair trade barrier on nullification and impairment grounds.

If we adopt an international standard, NAFTA insulates that standard from challenge as an unfair trade barrier. For example, if our Trade Representatives agreed to 115,000 pounds for our

trucks, assuming that we raise our standards and other countries lower theirs to reach middle ground, and adopt that standard, we are not subject to a trade barrier challenge. But if we insist on keeping 80,000 pounds and do not harmonize and cannot come to agreement, our standard could be challenged as a trade barrier.

This threat is really quite new. Most trade agreements in the past have dealt with quotas and tariffs, and only recently has the concept of health and safety standards being subject to challenge as a trade barrier come into play. And obviously the trade representatives who wrote the NAFTA were not aware of all of the protections, or did not pay attention to the kinds of protections and processes and procedures that we are used to in this country when we change these standards.

NAFTA creates very strong incentives for us to simply adopt the international standard. But international standards are characteristically weaker than U.S. ones. We have been the leader in automobile safety, and Senator Bryan rattled off a whole series of standards that we have, airbags, side-impact protection, and so on, that Mexico does not have. Canada has some of those. And so there is pressure to use the international standards and lower our own standards to avoid being subject to a trade challenge. Our highway safety standards are also stronger than Mexico's. Again, harmonization can only bring our standards down, and we believe that this is intolerable.

And third, whenever we choose not to use an international standard, our standards must satisfy a series of NAFTA tests or they will be considered unfair trade barriers and give rise to costly trade sanctions. Often the domestic laws that provide the greatest health, safety, and environmental protection impose more restrictions on trade than less effective ones, and as a result the most effective laws are most likely to be challenged as unfair trade barriers.

More specifically, NAFTA prohibits countries from adopting, maintaining, or applying any standards-related measure, "with a view to or with the effect of creating an unnecessary obstacle to trade between the parties." Under that provision, if a facially neutral measure operates to exclude an imported product, a challenge could be mounted on the ground that the product satisfies the standard's legitimate objective or that the objective is not legitimate. Many safety standards fail these tests.

If, as it once did, the Department of Transportation required trucks to use antilock brakes, and we hope that it shortly will in the future, a challenger might argue that an antijackknife device would have had the same effect—even though such a device takes longer to stop the vehicle, and it is more likely to roll over. But it would have the same effect, it would be sufficient, and therefore our antilock standard could be challenged as a barrier.

If the United States decided to ban asbestos-lined brakes because workers are exposed to asbestos when they install or repair them, another country could argue that the ban is unnecessary because workers could use protective clothing and ventilation and limit the risk, and therefore we did not need that ban. And there has been actually a Canadian challenge to our asbestos ban.

If the United States banned certain unsafe vehicles produced abroad, a challenger could argue that safety precautions would achieve the safety goal.

From my experience, I know that it is difficult to build a solid statistical case for any particular safety measure. For example, years ago we believed, but would have had a hard time proving, that airbags would provide more protection than any other type of restraints. And when I say a hard time, I mean statistically, because this was a technology-forcing standard and we did not have any on the highways so we did not have any statistics. Time has proved us right, but NAFTA would stand in the way of erring on the side of caution when the proof is not yet in.

Our health and safety are too precious to trade away. In our view, NAFTA threatens to punish us for being a leader in highway and fuel efficiency regulation. Worse yet, the fate of our protection lies in the hands of dispute resolution process that is stacked against health and safety, and we do not believe that this version of free trade is worth the cost.

[The prepared statement of Ms. Claybrook follows:]

PREPARED STATEMENT OF JOAN CLAYBROOK

The North American Free Trade Agreement ("NAFTA") does far more than reduce tariffs and open heretofore closed markets. It establishes dozens of rules limiting the. goals that countries may pursue and the means they may use in their health, safety, and environmental standards.

If disputes arise under these provisions, they will be resolved behind closed doors by trade experts, without any input from domestic proponents of the measure.[1] If a NAFTA panel finds that a domestic measure violates NAFTA, and the country does not change its measure within 30 days, the challenging country would be entitled to impose retaliatory trade sanctions.[2] In other words, NAFTA may force the U.S. literally to pay a penalty for having effective health, safety and environmental standards, and thereby make strong protections too costly to afford.

NAFTA would undermine a vast range of health, safety and environmental laws. In this testimony, I will focus on three:

- a pending trade challenge to our fuel economy standards to illustrate the threats posed to those standards
- recent harmonization of commercial drivers' license requirements between the U.S. and Mexico to highlight the types of changes NAFTA would require
- examples of highway safety standards that would be jeopardized by harmonization and trade challenges under NAFTA.

U.S. FUEL ECONOMY STANDARDS

The European Community has challenged the U.S. fuel economy penalties and the gas guzzler tax under the General Agreement on Tariffs and Trade ("GATT"), the global free trade agreement. The EC's principal contention is that these measures fall disproportionately on single line European manufacturers, even though the measures are facially neutral, applying to all cars or manufacturers that violate their standards.

- European manufacturers, namely, Mercedez, BMW and Volvo, had improved their cars' fuel efficiency markedly in the late 1970s and early 1980s so that they were on a par with the U.S manufacturers and above our fuel economy standards.
- BUT in the mid-1980s, they reversed course and let their average fuel economies slip by several miles per gallon, and that slippage brought them below U.S. manufacturers' fuel economy averages and below the applicable standards.
- In other words, they made a deliberate choice to lower their fuel economies and reap larger profits from selling their old inefficient models without investing in design changes and retooling, and now they are running to GATT to avoid paying the price for that market choice.

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[1] NAFTA articles 2009(2), 2012(1)(b).
[2] NAFTA article 2019.

In attacking our fuel efficiency standards and taxes, the EC is full of good ideas about how we could promote fuel efficiency without disadvantaging European manufacturers. For example, they support the notion of a carbon tax. But so did the Clinton Administration without success. The EC also has devised a novel way to calculate fuel efficiency that European luxury models would satisfy, even though they would still consume more gasoline than the average car sold in the U.S. The problem, of course, is that the EC's ideas have not garnered sufficient congressional support to be put into place, even if they would be as effective at improving fuel efficiency, which I sincerely doubt.

This highlights the most pernicious aspect of trade challenges to our domestic standards. These trade challenges tear apart domestic solutions to serious health, safety and environmental problems without putting any other solutions into place.

While the fuel economy challenge is now pending before the GATT, it could also be brought under NAFTA. And if a panel of trade bureaucrats (who are unlikely to be sympathetic to fuel economy goals) finds it violative of NAFTA, trade sanctions are automatically authorized under NAFTA itself. This is in contrast to GATT, which requires a separate authorization for trade sanctions, something that has rarely occurred in the history of GATT.

RECOGNITION OF MEXICAN COMMERCIAL DRIVERS' LICENSES

In a preview of what is to come under NAFTA, the Department of Transportation entered into a Memorandum of Understanding in November 1991 granting reciprocal status to Mexican commercial drivers' licenses, despite significant differences in the two countries' licensing requirements.

After concluding that the Mexican standards were "compatible" with U.S. standards, the Department of Transportation required states to recognize Mexican commercial drivers' licenses and preempted them from requiring Mexican drivers to obtain state commercial drivers' licenses. Moreover, the Department made clear that noncomplying states could lose federal highway funds.[3]

The International Brotherhood of Teamsters has challenged the Department of Transportation's preemption of state commercial drivers' licenses, contending (among other things) that the Department failed to follow the Administrative Procedure Act's ("APA's") notice and comment rulemaking requirements. *IBT* v. *Peña,* No. 92-1413 (D.C. Cir. argued Nov. 2, 1993). In particular, the Department announced that it had granted Mexican commercial drivers' licenses reciprocity without affording the public an opportunity to comment on whether Mexican standards are, in fact, compatible to U.S. safety standards.

The Teamsters contend that Mexican commercial drivers' licenses are not equivalent to U.S. ones, because:

- there is no assurance that Mexican drivers have sufficient knowledge of the English language to understand highway signs, respond to official inquiries, and file reports, which is critical for safeguarding hazardous materials
- there are no comparable Mexican requirements for sufficient knowledge to operate equipment safely or for special authorization to operate double or triple trailers, passenger vehicles, tank vehicles, hazardous materials vehicles, or air brake equipped vehicles
- there is no adequate information exchange to permit identification of disqualified Mexican drivers.

This scenario has significant implications for NAFTA.

- First, NAFTA requires countries to recognize "compatible" foreign standards, but it does not confine the agency's discretion in making a "compatibility" determination. Yet controversial, subjective determinations underlie this concept, calling for an assessment of whether very different requirements are nonetheless compatible.
- Second, if the Department prevails in the litigation, it will not be constrained by ordinary notice and comment procedures. NAFTA does not itself prescribe any procedures to be followed by agencies in making equivalency determinations to ensure a reasoned determination or public participation. Particularly, given the controversial and inherently subjective nature of an equivalency determination, public scrutiny and input is essential.
- Third, in granting reciprocity, the Department of Transportation preempted stronger state safety requirements. It did so by simply issuing a Federal Register notice, and indicated that it would enforce that notice by withholding federal highway funds. This illustrates the potent power of the federal government to compel states to abide by the federal government's international trade commitments.

[3] 57 Fed. Reg. 31,454 (July 16, 1992).

NAFTA perpetuates this power. Its implementing legislation recognizes the federal government's authority to sue states to compel them to bring their actions into conformity with NAFTA. As a corollary, the federal government could also enforce NAFTA through its power to preempt states and to withhold federal funds from them.

NAFTA THREATENS HIGHWAY SAFETY STANDARDS

NAFTA creates three intolerable threats to our highway safety standards.

• First, as the drivers' license scenario highlights, NAFTA requires the U.S. to permit drivers and vehicles to come into the United States even if they do not comply with our safety standards. As long as a bureaucrat decides perhaps without any public input that the Mexican or Canadian standards are "compatible," trade will prevail over our safety standards.

• Second, NAFTA requires the United States to work toward harmonization of safety standards. Under NAFTA, representatives of each country will participate in committees to establish harmonized standards. BUT these committees do not need to involve the public in their proceedings. Thus, there is no open meeting requirement, no right of access to their records, no requirement that the public be afforded an opportunity to comment on proposed standards. In this respect, these committees may diverge sharply from domestic standardsetting processes in Congress or in federal agencies under the Administrative procedure Act.

Nor are states guaranteed a participatory role, even though their standards may be adversely affected by the harmonization process. Once the three countries have agreed on harmonized standards, they must work to ensure that each country adopts that standard as its own, or at a minimum permits imports that comply with the standard. A state standard that provides greater protection than the harmonized one will be suspect and vulnerable to challenge as an unfair trade barrier on nullification and impairment grounds.

If we adopt an international standard, NAFTA insulates that standard from challenge as an unfair trade barrier. In this way, it creates strong incentives for us to simply adopt international standards. BUT international standards are characteristically weaker than U.S. ones. We have been the leader in automobile safety. The pressure to use international standards is pressure to lower our standards.

Our highway safety standards are also stronger than Mexico's. Again harmonization can only bring our standards down. This is intolerable.

• Third, whenever we choose not to use an international standard, our standards must satisfy a series of NAFTA tests or they will be considered unfair trade barriers and give rise to costly trade sanctions.

Often, the domestic laws that provide the greatest health, safety and environmental protection impose more restrictions on trade than less effective alternatives. As a result, the most effective domestic protections are the most apt to be challenged as unfair trade barriers.

More specifically, NAFTA prohibits countries from adopting, maintaining or applying any standards-related measure "with a view to or with the effect of creating an unnecessary obstacle to trade between the Parties."[4] Under that provision, if a facially neutral measure operates to exclude an imported product, a challenge could be mounted on the ground that the product satisfies the standard's legitimate objective or that the objective is not legitimate.

Many safety standards could fail these tests.

• If (as it once did), the Department of Transportation required trucks to use antilock brakes, a challenger might argue that anti-jack knife devices would have the same effect, even though it takes longer to stop the truck with them.

• If the U.S. decided to ban asbestos-lined brakes because U.S. workers are exposed to the asbestos when they install or repair the brakes, another country could argue that the ban is unnecessary because the workers could use protective clothing and ventilation to limit the risk.

• If the U.S. banned certain unsafe vehicles produced abroad, a challenger could argue that safety precautions would achieve the safety goal.

From my experience, I know that it is difficult to build as solid statistical case for any particular safety measure. For example, year ago, we believed, but would have had a hard time proving, that air bags provide more protection than other types of restraints. Time has proved us right. BUT NAFTA would stand in the way of erring in the side of caution when the proof is not yet in.

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[4] NAFTA article 904(4).

CONCLUSION

Our health and safety are too precious to trade away. NAFTA threatens to punish us for being a leader in highway safety and fuel efficiency regulation. Worse yet, the fate of our protections lies in the hands of a dispute process that is stacked against health and saf ety. NAFTA's version of free trade is not worth that cost.

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[Miscellaneous submissions by Ms. Claybrook may be found in the committee's files.]

The CHAIRMAN. That is a very important statement and contribution you have made, Ms. Claybrook. As usual, you folks have done your homework. And the litigation that you mention, what is the status of it?

Ms. CLAYBROOK. It is pending.

The CHAIRMAN. But is it going to be decided in the next week or next year?

Ms. CLAYBROOK. The court of appeals argument was about 2 weeks ago.

The CHAIRMAN. I see.

Ms. CLAYBROOK. So, it will probably come down early next year.

The CHAIRMAN. Early next year. By the way, there was a statistic of one on airbags, if you ask Mike Pertschuk, the former chairman of this committee. He went over at the foot of the Capitol Steps at the Senate side to view an airbag, and somehow as he opened the door the airbag went up in his face, and that put off airbags for a good 15 years, I can tell you that right now.

Ms. CLAYBROOK. Well, I know that, Senator, and it was not a real airbag, it was just a mockup. And unfortunately it happened, and it also upset Henry Ford, and that is one of the reasons he did not want to put them in his cars.

The CHAIRMAN. Right. But that is outstanding. And we have to have this and I know our chairman here with respect to transportation appreciates it, because it is all documented in here. You ought to get the first part too, but you are very familiar with it. Mr. Seligman.

## STATEMENT OF DANIEL SELIGMAN, TRADE REPRESENTATIVE, SIERRA CLUB

Mr. SELIGMAN. Thank you, Mr. Chairman.

It is critical, I think, even at this late hour in the NAFTA discussion, that we honestly address the way that this NAFTA effects American environmental sovereignty, the right that we have to enforce laws to protect our environment here at home. This debate is not about whether the United States shall look outward or inward, as some have argued, as we develop foreign policy in coming years. This debate is about the terms under which we will engage the outside world.

That is why the Sierra Club has consistently sought a NAFTA in our discussions with the USTR and with the Congress and the administration, if not this NAFTA. Many NAFTA proponents forget that this NAFTA is not simply the incarnation of a beautiful economic theory. It is 2,000 pages of rules and regulations that will define the terms of expanded trade and investment in North America and in the Western Hemisphere for decades to come.

Those rules were written by commercial interests for commercial interests. They largely ignored the interests of environmentalists and completely, I would add, ignored the interest of workers. Unregulated trade and investment pose enormous risks to the global environment. Experience bears me out.

During the 1980's, to fight the debt crisis, the World Bank, the IMF, and our own Treasury Department foisted trade liberalization and other structural adjustments on developing countries around the world, including Mexico, without regard for environmental or social impacts. The result was unsustainable depletion of natural resources, increased poverty, migration from the farm to forested areas, and increased industrial pollution.

NAFTA is built on the same trickle-down economic theory. That is why the trade establishment is so up in arms about opposition to this agreement. The officials and corporations who run U.S. international economic policy got away with environmentally destructive policies in the 1980's, so they cannot understand what all the fuss is about now.

The difference now is that unlike structural adjustment programs that were driven by the debt crisis and debated in the secret recesses of the IMF, the World Bank, and the Treasury Department, this trade agreement strikes home. It is not about abstract concepts like debt-to-export ratios and Brady bonds, it is about real things like jobs lost and factories closed, like maquiladoras flaunting pollution laws, and babies born in border towns with horrible birth defects. That is why the American people are engaged in this debate and it is about time.

No matter what happens to this NAFTA, the debate about U.S. foreign economic policy has been changed forever. This NAFTA, as I mentioned at the beginning, will undermine U.S. environmental protection in four ways.

This NAFTA compromises the right of the U.S. Government to enforce environmental laws passed by this Congress if those laws are alleged to interfere with international trade. Laws subject to challenge under NAFTA include the corporate average fuel economy standards important to this committee.

In addition, this NAFTA will increase the threat of industrial flight to countries with low environmental standards. It provides inadequate means to pay for border cleanup and other environmental needs, and it denies citizens a right to participate in NAFTA processes. I will touch briefly on these themes in closing.

As members of this committee know, CAFE standards are one of this country's most successful conservation laws. Since 1975 when CAFE standards first went into effect, average fuel economy for new U.S. cars has risen from 14 miles per gallon to 28 miles per gallon, despite the fact that real gasoline prices are lower than they were in 1975.

Despite the successes, CAFE and other vital U.S. environmental laws are threatened by NAFTA's technical rules. How do we know that? We know because NAFTA's rules are more stringent than those in the current General Agreement on Tariffs and Trade—the GATT—and because CAFE standards are already under attack by European automakers before a GATT dispute settlement panel.

If our trading partners believe that CAFE standards interfere with their exports, they could challenge those standards under any one of several NAFTA provisions. Challenges are heard by dispute resolution panels composed of unelected trade officials operating behind closed doors. There is no opportunity for the public to offer testimony or to provide written submissions.

If a dispute panel rules against one of our laws, we would either have to suspend enforcement of the law, or pay trade sanctions to keep the law in place.

The CHAIRMAN. Mr. Seligman, we are going to have another roll-call here in a minute. I do not want to cut you off. Your entire statement will be included in the record, and you can continue if you want, or you can highlight it as you wish.

Mr. SELIGMAN. OK, I will.

The CHAIRMAN. I am afraid if we get cut off again, then we will not be able to get the questions that Senator Exon and I have.

Mr. SELIGMAN. I will move quickly here.

First, if a product standard like CAFE is challenged under the NAFTA, the United States must show that the law has a legitimate purpose. The NAFTA defines "legitimate purpose" to include protecting the environment. The problem is that virtually every environmental law that passes this body will have more than one purpose. In building support for any bill, many interests have to be reconciled. Political compromises are made. NAFTA sets itself up as the ultimate arbiter of which congressional decisions reflect legitimate goals and which do not.

Second, NAFTA requires that our standards do not have the effect of creating an unnecessary obstacle to trade. The problem here is that many product standards that serve legitimate goals could have the effect of blocking trade.

The Europeans challenged CAFE in GATT because it impedes exports by carmakers that tend to produce fuel-inefficient cars. That was not the intention of lawmakers who wrote the CAFE standards in 1975, but the argument is made that the effect is to block exports from foreign companies that refuse to build more fuel-efficient cars.

Third, CAFE standards might be found to conflict with NAFTA requirements that standards treat like products the same. However, since CAFE regulates not individual cars but the entire annual production of a particular company, it could violate the like products rule.

Fourth, NAFTA could stall efforts to increase fuel efficiency of cars sold in the United States. NAFTA sets up process for harmonizing standards between countries. Automotive standards will be harmonized within 10 years by a committee called the Automotive Standards Council. Canada informally conforms to U.S. CAFE standards, but Mexico has no CAFE-like laws and does not require their manufacturers to meet fleet average requirements. Therefore, in the process of harmonizing standards, it is quite likely that our standards would be lowered.

I will just briefly mention the other concerns we have consistently raised without going into any detail. First, this NAFTA does not do enough in the side agreement to ensure that environmental laws will be stringently enforced.

Second, the funding plan is quite weak. The proposed funding for the NADBank of $2 billion is well short of the amount of new funding that we see as needed to clean up the mess on the border and to better enforce environmental regulations in Mexico.

Finally, I would say that we do not have to look much beyond the NAFTA text to see an actual downward harmonization of standards in this agreement. If you look at any of the mechanisms in the NAFTA, in the side agreement, in the NADBank proposal that provide for administering these organizations and mechanisms, they all consistently shut out the public. There is no provision in any of them for adequate involvement of the public. We find this agreement wholly inadequate.

[The prepared statement of Mr. Seligman follows:]

PREPARED STATEMENT OF DANIEL A. SELIGMAN

Thank you Mr. Chairman for calling this hearing. It is critical that we honestly address the way that this NAFTA affects American environmental sovereignty—the right to enforce laws to protect our environment.

NAFTA supporters have consistently misunderstood and misrepresented the purpose of NAFTA opponents like the Sierra Club. Yesterday's Washington Post, for example, called this vote a defining moment in American history in which the American people will chose either to look outward and face our international responsibilities or turn inward and ignore the rest of the world.

Nothing could be further from the truth.

This debate is not about whether we shall look outward or turn inward. This debate is about the terms under which we will engage the outside world. Many NAFTA proponents forget that this NAFTA is not simply the incarnation of a beautiful economic theory. It is 2,000 pages of rules and regulations that will define the terms of expanded trade and investment in North America and in the Western Hemisphere for decades to come.

Those rules were written by commercial interests for commercial interests. They largely ignore the interests of environmentalists and completely ignore the interests of workers.

The Sierra Club's environmental goals requfre that we engage the forces shaping global development and the global environment. That's why we have consistently called for an agreement that regulates trade and investment flows in North America in ways that are consistent with sustainable development.

The reason is very simple. Bxpanded trade and investment IInks our society more closely with our neighbors' societies. Under unregulated trade, footloose corporations can invest in countries where environmental standards are weak. That makes it harder for us to keep our own environmental standards high and makes it harder for our neighbors—especially a developing country like Mexico—to achieve high environmental standards.

Unregulated trade and investment thus pose enormous risks to the global environment. Experience bears me out. During the 1980s, to fight the debt crisis, the World Bank, the IMF and our own Treasury Department foisted trade liberalization and other structural adjustments on developing countries around the world—including Mexico—without regard for environmental or social impacts. The result was unsustainable depletion of natural resources, increased poverty, migration from the farm to forested areas, and increased industrial pollution.

NAFTA is built on the same trickle down economic theory. That's why the trade establishment is so up in arms about opposition to this agreement. The people who run U.S. international economic policy got away with environmentally destructive policies in the 1980s, so they can't understand what all the fuss is about.

The difference now is that unlike structural adjustment programs that were driven by the debt crisis and debated in the secret recesses of the IMF, the World Bank and the Treasury Department, this trade agreement strikes home. It is not about absfract concepts like debt ratios and Brady bonds. Its about real things like jobs lost and factories closed, like maquiladoras flaunting pollution laws and babies born in border towns with horrible birth defects. That's why the American people are engaged in this debate. And its about time. No matter what happens to this NAFTA, the debate about U.S. foreign economic policy has been changed forever.

This NAFTA will undermine U.S. environmental protection in four ways.

First, this NAFTA compromises the right of the U.S. government to enforce environmental laws passed by this Congress if those laws are alleged to interfere with international trade. Laws subject to challenge under NAFTA include the Corporate Average Fuel Economy standards important to this committee.

In addition, this NAFTA will increase the threat of industrial flight to countries with low environmental standards. It provides inadequate means to pay for border clean-up and other environmental needs. And it denies citizens the right to participate in NAFTA processes. I will touch briefly on these themes in closing.

ENVIRONMENTAL SOVEREIGNTY AND CAFE STANDARDS

As members of this Committee know, CAFE standards are one of this country's most successful conservation laws. Since 1975, when CAFE standards first went into effect, average fuel economy for new U.S. cars has risen from 14 mpg to 28 mpg despite the fact that real gasoline prices are lower now than they were in 1975.

CAFE works by requiring car manufacturers to produce fleets of cars with an average fuel economy at or above a standard, currently 27.5 mpg. Manufacturers whose fleets fall below that standard receive penalties.

CAFE saves 2.5 million barrels of oil per day. This year, CAFE will save over 150 million metric tons of carbon, the key global warming pollutant. It has strengthened the competitiveness of US automakers against foreign rivals, slashed urban smog, cut reliance on imported oil, lowered the U.S. trade deficit, and saved consumers money at the gas pump.

Yet CAFE and other vital U.S. environmental standards are threatened by NAFTA's technical rules. How do we know that? We know it because NAFTA's rules are more stringent than those in the current General Agreement on Tariffs and Trade (GATT) and because CAFE standards are already under attack by European automakers before a GAG dispute settlement panel.

If our trading partners argue that CAFE standards interfere with their exports, they could challenge those standards under any one of several NAFTA provisions. Challenges. are heard by dispute resolution panels composed of unelected trade officials operating behind closed doors. There is no opportunity for the public to offer testimony or provide written submissions. If a dispute settlement panel rules against one of our laws, we would either have to suspend enforcement of the law or pay trade sanctions to keep the law in place.

Four rules that guide the work of NAFTA panels are of special concern.

First, if a product standard—like CAFE—is challenged under NAFTA, the United States must show that the law has a "legitimate purpose." The NAFTA defines legitimate purposes to be protecting the environment. The problem is that virtually every environmental law that passes this body will have more than one purpose. In building support for any bill, many interests have to be reconciled. Political compromises are made. NAFTA sets itself up as the ultimate arbiter of which Congressional decisions reflect legitimate goals and which do not.

The Europeans have argued that CAFE does not serve a legitimate purpose and that its purpose is, instead, to benefit large, integrated full-line car makers like GM, Ford, and Chrysler. They base their claim on the fact that CAFE penalties have been assessed in ways that benefit the U.S. auto industry.

The Europeans have argued that alternatives—for example, a steep energy tax—would better serve the goal of reducing fuel consumption and protectIng the environment. They could well be right. The problem is that the U.S. Congress has found that such tax increases are politically impossible at this time. CAFE is all we've got. Yet in reviewing CAFE, NAFTA panels would not be able to consider underlying political factors that conditioned how our laws were written.

Trade agreements should be able to review environmental laws to prevent unnecessary impediments to trade. However, they should be required to take political and administrative—as well as narrowly economic—factors into account when judging whether or not particular laws serve a legitimate purpose.

Second, NAFTA requires that our standards do not have the effect of creating an unnecessary obstacle to trade. The problem here is that many product standards that serve legitimate goals could have the effect of blocking trade.

The Europeans challenged CAFE in GATT because it impedes exports from car makers that tend to produce fuel inefficient cars. That was not the intention of lawmakers who wrote the CAFE standards in 1975, but the argument is made that the effect is to block exports from foreign companies that refuse to build more fuel-efficient cars.

To fix this problem, the NAFTA should have been changed to permit standards—like CAFE—that are facially non-discriminatory in intent even if they are discriminatory in effect.

Third, CAFE standards might be found to conflict with NAFTA requirements that standards treat "like products" the same. However, since CAFE regulates not individual cars but the entire annual production of a particular company, it could violate the "like products" rules. Two companies might seek to export two equally fuel inefficient cars to the United States. However, if the average fuel efficiency of cars from company A meets CAFE guidelines, the gas guzzlers it sells here won't get penalized. In contrast, if the average fuel efficiency of cars from company B exceed CAFE guidelines, a similar gas guzzler it makes could be penalized.

To fix this problem, the NAFTA should—again—be changed to specifically permit standards—like CAFE—that are facially non-discriminatory in intent.

Fourth, NAFTA could stall efforts to increase fuel efficiency of cars sold in the United States. NAFTA sets up processes for harmonizing standards between countries. Automotive standards will be harmonized within ten years by a committee called the "Automotive Standards Council." Canada informally conforms to U.S. CAFE standards, but Mexico has no CAFE-like laws and does not require their manufacturers to meet fleet average requirements. Therefore, harmonizing automotive standards between the U.S., Canada, and Mexico could stall any effort to increase fuel efficiency improvements.

CAFE and other fuel efficiency standards could be challenged by Canada or Mexico under NAFTA just as they have been challenged under GATT. If CAFE or gas guzzler standards become more stringent, then automobiles made by U.S. makers and technically defined as foreign-produced could be penalized. For example, if we raised the gas-guzzler tax, Ford's Crown Victory, technically a foreign-made care, could be in violation. Canada would then be able to challenge the gas guzzler tax under NAFTA on behalf of Ford because the imported content of the car comes from Canada.

NAFTA would provide a less environmentally friendly forum for such challenges than the GATT. Not only are NAFTA's technical rules more stringent than GATT's, but in contrast to the GATT there is not appeal of dispute panel decisions.

### OTHER ENVIRONMENTAL CONCERNS WITH NAFTA

Now let me briefly address three other Sierra Club concerns with NAFTA.

First, by fostering trade and investment flows in North America, the NAFTA increases the likelihood that companies will use the opportunity to escape tougher environmental laws in the United States.

The environmental side agreement, intended to address this problem by encouraging tougher enforcement of environmental laws, is quite inadequate to its task. I will just make two points. First, the dispute resolution process is so long and complicated that sanctions are unlikely ever to be applied. In the words df Mexico's Commerce Secretary Jaime Sera Puche, "The time frame of the process makes it very improbable that the stage of sanctions could be reached." However, where sanctions cannot be applied, they are unlikely to have the effect of changing behavior.

Yet, even if sanctions are applied, they are too small to have any affect. In NAFTA's first year, only $20 million in sanctions would be applied against a country found to have persistently failed to effectively enforce its laws. Measured against Mexico's $250 billion economy, where adequate environmental enforcement would cost billions of dollars, a $20 million sanction is obviously meariingless. What is more, the $20 million penalty is put in a fund that actually goes back to the violator. Its hard to conceive what theory of behavioral modification this approach is based 0iL

Second, the issue of NAFTA's environmental funding has been widely misunderstood. The question has been framed as to what means we would use to pay the environmental costs of expanded trade and investment To this end, the Clinton Administration has proposed a $2 billion North American Development Bank (NADBank).

The fact is, however, that the environmental costs of expanded trade are already being paid. The environmental costs of the maquiladora program are already paid by the mother living in a shantytown downstream from a U.S. owned-maquiladora who gives birth to a child with severe birth defects. The environmental costs of expanded investment in Mexico are already being paid by employees of Green Giant, Birdseye, and other U.S. companies who suffer high rates of diarrheal disease because the crops they tend are irrigated with urban waste water. The environmental costs of economic growth on the border are already being paid by U.S. residents of El Paso and Brownsville who live with the brown pal of some of this nation's worst air over their homes.

So when we talk about raising the money to meet environmental needs on the border and in the interior of Mexico, it is not a question of imposing new costs on

a poor country. Its a question of shifting costs that already are exorbitantly high from the poor and the powerless to the companies who have grown rich while polluting the country that has been so hospitable to them.

Third, we don't have to wait for NAFTA to go into effect to see the downward harmonization of standards. All we have to do is look at the NAFTA documents themselves.

With respect to the right of the American people to participate fully and freely in decisions that will affect their lives, this NAFTA is a disaster. Far from leveling our trading partners up to U.S. standards, we appear to have fallen to the lowest common denominator.

As is well known, the public is denied a role when U.S. laws, passed through open, democratic processes by this Congress, are challenged as trade barriers. They are also denied a role in the Committees that NATA sets up to harmonize our environmental regulations with those of Canada and Mexico.

I would point out that the provisions for public participation in the new Border Commission set up to manage infrastructure projects is also quite inadequate. The Commission's Board of Directors has local representatives. But those representatives are appointed by the U.S. and Mexican governments. To put it mildly, the Mexican government has a penchant for centralized decision.making. Its hard to see how any of the people it appoints to the Commission's Board will have the independence they need to serve their communities.

In addition, the Border Commission adopts the same kind of secrecy rules that pervade the NAFTA itself. Information in the Commission's possession cannot be disclosed if either Mexico or the United States notify the Commission that "public discolure would impede its law enforcement." Similar secrecy rules have hamstrung the bi-national work under the 1983 La Paz accords and the International Border Environmental Plan.

CONCLUSION

In closing, I would like to site the work of one of this country's leading trade and environment experts. The analyst supports NAFTA on commercial grounds, but nevertheless finds NAFTA's environmental provisions to be meager at best.

He writes, "[A] close reading reveals that many of NAFTA's putative pro. environment provisions are neutral or restrictive of environmental legislation. There is very little green in the NAFTA. Much of it is un-green. * * * As this study has shown, many of the green claims made about the NAFTA by the pro-NAFTA lobby are incorrect. * * * [T]here is an unmistakable persistent pattern of deception by both private individuals and government officials."[1]

The CHAIRMAN. Very good, and with respect to, of course, I am confident you traveled down, and I have, right across the line to Tijuana and seen that one plant next to the dairy farm, and they kept paying for the different cows as they bumped them off with this pollution and everything else of that kind.

It is scandalous, to tell you the truth, to watch American industry of the best character and kind that we have in this country down just across the border, and they have been there some 28 years with the maquiladora thing, with less regard for the environment or for living standards.

I mean, they are all talking about, oh, they can do it now. Yes, that is true. Ask any of these corporate executives to go down there and live in that squalor. I mean, there is no streets, there is no plumbing, there is some electricity, but several of the houses have a little battery because you could not run the TV and the light at the same time. If you turned on the TV the light went out, and no toilet facilities and everything else.

They had a terrible rain there in January. It all went down into the harbor near San Diego and they had to close two of the beaches. That is the kind of thing. After 28 years of the so-called blue

[1] Steve Charnovitz, "The North American Agreements on Free Trade and Environmental Cooperation: Green Law or Green Spin?" Paper prepared for presentation at the Conference on "NAFTA: Trade and the Environment," University of Virginia Law School, November 6, 1993.

chip corporations, that is their attitude and everything else as you come up here, oh, we are going to do this, we will agree to that, and everything else.

They have been tried and found terribly wanting, and it is really a disgrace. There is no consonance or recognition, whatever, of what is the fact and what they have done, as contrasted with what they are seeing up here, and in order to try to promote the enactment, but we have got the record from both full statements here, and we need that.

There is no doubt this will be voted out. I do not know whether without recommendation, or what will be the vote, but let me yield to Senator Exon, who has chaired our Transportation Committee. As we said, we were having Ambassador Kantor to come up on that May 4 hearing that you had, but then he had to switch off, if you remember.

Senator Exon.

Senator EXON. Mr. Chairman, thank you very much, and to both of you I appreciate very much your being here today, and for this very important matter that many of us remain very concerned about.

Let me start off, if I might, Ms. Claybrook, with you in a general question, because I think that we have not paid enough attention to this whole matter of safety.

As I am sure you know, Canada generally has been known for being rather innovative in some of their highway safety prerogatives, as I understand it. They are now requiring headlights even in the daytime in all of Canada or parts of Canada.

Could you give me a thumbnail sketch? We generally assume that the United States of America is ahead of either our neighbors to the north or our neighbors to the south in the all-important matters of highway safety, hazmat rules and regulations, and so forth and so on. Is that generally true, in your opinion?

Second, are there some standards, or any standards in either Canada or Mexico in certain areas where maybe we could learn a lesson from them on the matters of highway safety?

Ms. CLAYBROOK. Well, generally I am not familiar in detail, standard by standard, with both Mexico and Canadian standards, but I do know from my work at the Department of Transportation that the Canadian motor vehicle safety standards generally follow the Department of Transportation ones in the United States, that they would use a lot of the material that we developed, and that they would very often issue standards shortly after we had.

That is not always the case. Sometimes they took a lead. I know that they did, for example, in school bus safety, do some very important work, so they have in some instances done work before us. They also required seatbelt usage, and we were very reticent about doing that in the United States.

But, for example, in our work on airbags, which is the single most important standard we have ever issued, they were very reticent about moving to airbags during the whole period of time when we were working on it. So, they have followed us generally, I would say.

The Mexicans have had very few standards, and I do not know, I have not really studied the Mexican standards, so I cannot an-

swer that in detail, but I am sure the Department of Transportation could do that for you.

Senator EXON. Generally speaking, we have had this agreement with Canada now for some time, and you have mentioned the airbag situation and other things where they have come along with some of our, hopefully more advanced action in this area.

By and large, then, would you conclude that the matter of highway safety qualifications of drivers, license of drivers, age of drivers, and all of those things have not been—with the possible exception of airbags has not been a major problem with regard to the free movement of trucks back and forth across the Canadian-U.S. border?

Ms. CLAYBROOK. Well, as far as I know—of course, in trucks it is different than cars, but as far as I know, with regard to automobiles there has not been any significant problem. The truck standards, of course, between Canada and the United States are quite different, particularly in the size of vehicles and the length of vehicles, and so there is a substantial difference there that has not become a matter of dispute yet.

There is an attempt going on to have what is called a CANAMEX agreement which has not been completed, which would have the whole border area on the west coast, as I understand it, that would allow travel of the larger vehicles through that whole area, back and forth between Canada, the United States, and Mexico.

Under NAFTA, what is permitted is that there is a border area that the Mexicans can come into for delivery, but they have to meet our standards.

Senator EXON. They would be border areas in the United States.

Ms. CLAYBROOK. In the United States, then it enlarges and eventually becomes the whole United States during the whole process of harmonization of our standards, so it attempts to match that. Whether it will exactly match it, it is hard to tell, and to predict, but the problem is that the enforcement that has been done has shown that, No. 1, there is very little enforcement, if any at all, that goes on, and with this increased traffic it will be much more difficult.

Second, where there has been enforcement, gross violations have been found. I have two statistics that I can give you. One is, in Texas, the Department of Public Safety, they have only 13 enforcement personnel in the license and weight service that deal with the Mexican border region. Of course, it is quite a large border region, and there are 12 international ports of entry there.

Then the other piece of information I can give you is that on January 19 the Federal Highway Administration Motor Carrier Region 9 Office checked 271 drivers in the commercial zone between Arizona and Mexico border—19 percent had no licenses at all, and 81 percent did not possess the required ICC certificate for their vehicles.

So, the big problem is going to be enforcement—before completed harmonization—and even after harmonization, enforcement of those standards and requirements will be a problem.

So, I believe that there are very substantial concerns to be had by people, legitimately, that these larger vehicles are going to be coming into the United States. Based on the memorandum of un-

derstanding for commercial driver licenses and the procedures used by the Department of Transportation, it seems that the public is pretty much excluded from having anything to say about it.

So, we have a lot of concern about that, and if there is harmonization—because Mexico is 170,000 pounds, Canada is 137,000 pounds, and we are 80,000 pounds. You know, harmonization means you come to some place in the middle—I believe they are going to try and come back with a much higher weight requirement for the United States.

Senator EXON. Ms. Claybrook, I suppose we are going to have this immediately, because we do not have it in the United States, but we have had one or two very important hearings at Surface Transportation with regard to the so-called IVHS technology that could check trucks for violations just by merely driving by a recorder.

Do you think that something like this in the future would be, maybe, an important step forward, safetywise, with regard to Mexican vehicles coming into the United States?

Ms. CLAYBROOK. I think that it could be, but the technology is very expensive right now, and I think that you are talking 15, 20 years before we really see that technology in full use, because it is hard to get now since the average age of the trucks in Mexico is approximately 15 years and the average age of the trucks in the United States is 4 or 5 years. I imagine it is going to be a long time before you are going to see Mexico investing in that kind of technologybecause it is expensive.

Senator EXON. Well, that last statement that you made with regard to the age of trucks and hazmat regulations, that we have been moving forward on very aggressively, and I must say I believe we have made a really good understanding with the trucking industry in the United States, which probably has more capital structure to make the improvements that we have mandated that they make.

Is there a significant difference, from your knowledge, as to the type of construction of a tank that moves hazardous material in trucks in Mexico and trucks in the United States as of now? I know there have been some strides made in that area. Do you have any facts or figures on the condition of Mexican trucks coming into the United States if NAFTA is approved under the present condition of the truck fleet in Mexico generally?

I assume the truck fleet in Mexico is—just for age factor if nothing else is considerably below what we would consider normal for our trucks in the United States.

Ms. CLAYBROOK. I think you are correct in your statement there. I do not have any special knowledge about the construction, and again, I think that I would have to ask the Department of Transportation to look into that. It is hard to get information at that level of detail from Mexico at this stage, but I do think because their trucks are so much older, they just do not have many of the modern things that we have developed, and now incorporate into our vehicles.

Senator EXON. You I think were here when the Ambassador was answering some of my questions with regard to driver's licenses, commercial driver's licenses, and so forth and so on, and I know

that you addressed this in some detail in your statement, and I appreciate that very much.

Do you take any particular exception to the answers that we received from the Ambassador on the series of questions that I asked him with regard to licensing, commercial licensing, and so forth and so on, or was that glossed over a little bit, in your opinion?

Ms. CLAYBROOK. I think that he was very misleading in what he said, because the memorandum of understanding that was issued by the Department of Transportation with Mexico in 1991, first of all, there was no public process involved in it, which has now been challenged in court by the Teamsters, but second, there is a ruling that the licensing standards were compatible, and yet they are not compatible.

There are significant differences between the license requirements of the United States and Mexico. Among the differences is a requirement for knowledge of English language so that you can read signs, knowledge of the types of vehicle you are driving and the types of cargo you are carrying.

As to age 18 and 21, while it is true that they do have to meet U.S. law, we have had experience with age 18 on motorcycle helmets use laws, where in the United States it was not possible to determine whether or not someone was age 18. It is a very difficult to know when to check someone's age when they are driving on the highway.

With the volume of trucks coming over the border, the lack of enforcement personnel, the number of ports of entry, I am sure there will be plenty of people who are 18, driving with a valid Mexican driver's license, who are not 21 but will cross that border, and it is going to be very difficult for our enforcement personnel to enforce a minimum age requirement.

Senator EXON. I had not fully realized until I was reading through your statement with regard to the pretty highhanded approach that the Department of Transportation has taken toward the States, basically telling them that you will allow the Mexican drivers and Mexican equipment in and recognize the driver's license procedure whether it meets our standards or not, and if you do not do that, the States can essentially, according to—your statement said that you, the States, could lose Federal highway funds.

Ms. CLAYBROOK. California actually raised this issue and objected to the memorandum of understanding, and they were told by the Department of Transportation that they could lose their Federal highway funds, so they stopped objecting. Of course, they are so close to the border that they were more likely to be affected by the memorandum of understanding than any other States.

Senator EXON. Now, I am not sure that I quite understand these areas—there are certain areas so far from the border, as I understand it, that the Mexican trucks would be allowed to enter the United States, and that is kind of an evolving process, and maybe something like that would be in order.

You know, it looks to me like at least we are saying to them by a certain date, if you want to drive to New York City from Mexico City you have to be fully standardized and meet all the requirements of our rules and regulations.

What about in the short term with regard—as you understand the understanding now, would the transportation of hazardous materials out of Mexico into the United States, would they be required, if and when the treaty is signed, to immediately have all of the flagging and information that we require on those trucks with regard to hazardous material, or is there a leeway in time for which they would not have to meet those standards?

Ms. CLAYBROOK. It is my understanding they are supposed to meet the standards, but again, the problem here is that there is an economic push, if you would, to go ahead and try, even if they do not, because the enforcement is so lax, and I think that that is the rub, that is the difficulty.

While I think the Trade Representative can say with honesty, yes, they have to meet our standards today. But, if NAFTA passes tomorrow, nevertheless, it is going to be very difficult to do that enforcement because so many of these requirements are not obvious from just looking at the vehicle itself. Some of them are. Most of them are not.

Senator EXON. Do you share—and then I will bring you into this for just a moment, if I might, Mr. Seligman, and thank you also for being here.

You both have indicated in one way or another in your testimony that if you look at the laws in Mexico you look at that law both from the safety standpoint and from an environmental standpoint and say, well, yes, that is not too far removed from what we have in the United States.

Maybe we ought to fix it up a little bit here or a little there, but generally speaking, as I understand it, they have pretty good environmental laws and pretty good safety laws, but I suppose, and if I understand correctly in both instances they just simply do not do a very good job, or any job at all, in enforcing those. Is that a continuing problem?

Ms. CLAYBROOK. Well, certainly they do not have the motor vehicle safety standards that we have. They have a few, but nothing like what we have.

Mr. SELIGMAN. It is my understanding that in many areas Mexican law is actually much weaker than U.S. law. There is no comparable Mexican law to our Superfund liability law. Their occupational safety and health regulations are much weaker than our own. There are no mining regulations about how to deal with mining waste. We have at least some regulations in that respect here.

They have a general environmental law that was put into place in 1988, but a lot of their regulations to implement the law have yet to be written.

Senator EXON. We have heard a great deal about the environmental concerns on the border between the United States and Mexico, and some of the problems were cited by the chairman with regard to rains after certain situations occur. Is the environmental situation in the area immediately across the border worse than in Mexico in general, or is it about the same?

What I am trying to get at is the process that was set up to encourage American companies to go across the border to go into the manufacturing business. Obviously, that has made the environ-

ment in that part of Mexico along our borders much worse than it was before we had that process in place.

From your knowledge, Mr. Seligman, are there similar lacks of enforcement of environmental laws in other parts of Mexico, Mexico City, and so forth?

Mr. SELIGMAN. Generally speaking, yes. There are pockets of extreme environmental neglect throughout Mexico. The border has attracted increased attention because a lot of the pollution comes across the border through aquifers or through air sheds, but in fact environmental problems are widespread throughout Mexico, and whatever sector you look at, be it industry, agriculture, mining, you name it, there are serious problems there.

Senator EXON. We have heard time and time again about the Rio Grande being the most polluted river in the world, or in our continent, lots of descriptions of it. Do they have serious degradation of other rivers in Mexico? I suppose they are not as polluted as the Rio Grande, but what do you and your organization know about environmental considerations in other rivers? Are they dumping raw sewage pretty much throughout the country into their river systems?

Mr. SELIGMAN. Essentially, yes. We know, for example, about the Coatzacualco River in Vera Cruz. It flows through an area where there is a lot of oil drilling and refining. It is extremely polluted. Really, much the same applies to most rivers that flow through industrial areas in Mexico, and so there is actually a clear pattern of nonenforcement of environmental law throughout the country. It is not confined to the border region.

Senator EXON. Thank you both very much. I appreciate you being here. Thank you, Mr. Chairman.

The CHAIRMAN. Thank you.

Let the record show when we were referring to the vehicles manufactured, that I did amongst my visits down there go by the Hyundai tractor trailer manufacturer. I have been to Michigan, and I have seen Willow Run, and I thought I was seeing Willow Run all over again. That was a magnificent, tremendous factory, and they were really producing a quality product. It was not any question in my mind otherwise.

Let, by reference—and we do not have to print the entire thing, but by reference the entire record of the U.S. General Accounting Office report of August 19, 1992, of an assessment of Mexico's environmental controls for new companies, and that will be by reference a part of this hearing record in that they went down there, of course, and they looked at six.

None of the six new U.S. majority-owned maquiladoras in the sample were complying with the environmental laws. I mean, they had no idea of doing it. There was no enforcement mechanism, and no one else did it, and no one else does, and you just have to go down there and look at it.

It is just a very interesting thing, that we have got a Constitution, and they say, we pattern our constitution after yours, but we have 26 amendments after 200-and-some years, and after 65 years, they have got 400-and-some amendments, and they will give you 5 more amendments by tomorrow morning if you want them.

It makes no difference. We appoint judges, they appoint judges, but our judges respond to the people. Their judges respond to the executive. So you have got to understand, it is the most corrupt judiciary in the world, there is no question about that. Everyone knows it. They have got the human rights reports and everything else of that kind.

So, that is why they have not invested more down there, because they had no protection for the investments, so rather than, really, a trade act, this is more so the investment protection act, Mexico investment protection act of 1993, and with that you have got binding arbitration and you do not have to go through the Mexican courts, and therefore I can at least get my money back.

I talked to those who invested, and up till now have lost their money and otherwise could not get it back, and they said now, under these circumstances, that is the real value of NAFTA, and the record should so reflect it.

Are there any further questions?

Senator EXON. I had one further question. If I understood you correctly, Mr. Chairman, and I have not seen the Hyundai plant you referenced specifically, a very, very modern plant, right up to snuff, but are you saying that that plant was built and is not complying and was not built to comply with even the lax enforcement of environmental laws?

The CHAIRMAN. No, I was not saying that. I was talking about the quality. You were talking about the manufacture, and I have no knowledge one way or the other, but I do have the knowledge of the U.S. companies, and that was referred to in the GAO report.

Mr. SELIGMAN. Similar construction is taking place along the border in the Carbon II plant. Mexico is trying to build a new coal-fired electric powerplant that should comply with Mexican regulations but in fact does not. It lacks scrubbers to take the sulphur out of the emissions.

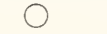
Ms. CLAYBROOK. Mr. Chairman, I would also like to submit some documents for the record, including the statement that we made to the EC on the fuel economy standards and some legal memoranda that we have written on how the safety standards can be subject to challenge, as well as Henry Waxman's letter to the President on this issue.

The CHAIRMAN. Very good. They will be part of the record.

We appreciate your appearance, both of you, this afternoon. Thank you.

The committee will be in recess.

[Whereupon, the committee adjourned at 5:40 p.m.]



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